

SUPREME COURT OF THE UNITED STATES

DECEMBER TERM, 1942

No. 351.

EMILIO VALDEZ, PLAINTIFF IN ERROR,

THE UNITED STATES.

ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JANUARY 10, 1943

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 361.

EMILIO VALDEZ, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Province of Nueva Ecija,
Fourth Judicial District.

Criminal Case No. 2079.

THE UNITED STATES, Plaintiff,
versus
EMILIO VALDEZ and FRANCISCO AMANTE, Accused.

For Murder.

Complaint.

The undersigned accuses Emilio Valdez and Francisco Amante, as principals, by inducement and cooperation, of the crime of murder, committed as follows:

That on or before the 17th day of March, 1912, in the municipality of Gapan, Province of Nueva Ecija, P. I., the aforesaid accused, Emilio Valdez and Francisco Amante, conspiring with one Juan Gatmaitan, criminally, illegally and voluntarily, induced the latter to accept and supplied him with a two-barreled shotgun for the purpose of killing one Eusebio Yuson, promising to pay him nine hundred pesos (P900.00) Philippine currency; that on the 17th day of March, 1912, at about 8 o'clock at night in the municipality of Gapan, Province of Nueva Ecija, P. I., the aforesaid Juan Gatmaitan, criminally, illegally and voluntarily, and with malice aforethought, treachery, and by reason of the promise of reward made to him by them, and with the shotgun supplied to him by the two aforesaid accused, Emilio Valdez and Francisco Amante, and in obedience to their instructions, fired one shot at Eusebio Yuson, causing nine (9) wounds on the right hand side of the back with small shot, five of which passed through the lungs and passed out on the right hand side of his chest, from the results of which wounds the aforesaid Eusebio Yuson died almost instantly. Act committed within the limits of this court of first instance and in violation of the law.

San Isidro, Nueva Ecija, P. I., June 21, 1912.

(Sgd.)

ANTONIO VILLAREAL,
Assistant Attorney, Bureau of Justice.

Witnesses:

Perfecta de Guzman, Gapan, Nueva Ecija.

José de los Santos, President of Board of Health, Gapan.

Lucas Figueroa, Gapan.

Victor Marcelo alias Robaya, Gapan.

Mateo Arcilla, Gapan.

Juan Gatmaitan, Gapan.

E. W. Crockett, Captain of Constabulary, Gapan.

THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of Nueva Ecija, 4th District.

Criminal Case No. —.

THE UNITED STATES, Plaintiff,

versus

EMILIO VALDEZ and FRANCISCO AMANTE, Accused.

For Murder.

Complaint.

The undersigned accuses Emilio Valdez and Francisco Amante of the crime of murder, committed as follows:

That on or before the 17th day of March, 1912, in the municipality of Gapan, Province of Nueva Ecija, P. I., the aforesaid accused Francisco Amante, criminally, illegally and voluntarily, furnished a two-barreled shotgun to the other accused, Emilio Valdez, for the purpose of killing one Eusebio Yuson with the same; that on or before the 17th day of March, 1912, in the municipality of Gapan, Province of Nueva Ecija, P. I., the aforesaid accused Emilio Valdez, criminally, illegally and voluntarily, induced Juan Gatmaitan to kill the aforementioned Eusebio Yuson, promising to pay him nine hundred pesos (P900.00) Philippine currency; that on or about the 17th day of March, 1912, at about 8 o'clock at night, the aforesaid accused Emilio Valdez and the said Juan Gatmaitan, criminally, illegally and voluntarily, with malice aforethought, treachery and by reason of a promise of reward, and with the aforesaid shotgun furnished by the said accused Francisco Amante, fired a shot at Eusebio Yuson, causing nine mortal wounds with small shot on the right-hand side of the back, five of which went through the lungs and passed out on the right-hand side of the chest, from the result of which wounds the aforesaid Eusebio Yuson died instantly. Acts committed within the limits of this court of first instance and in violation of the law.

San Isidro, Nueva Ecija, P. I., July 5, 1912.

(Sgd.)

SANTIAGO LUCERO,
Provincial Fiscal.

Witnesses:

José de los Santos,	Gapan, N. E.
Florentino García,	" "
Rufino Alacon,	" "
Luis de los Santos,	" "
Victor Marcelo alias Robayo,	" "
Mateo Arcilla,	" "
Juan Gatmaitan,	" "
Braulia Arcilla,	" "
Lucas Figueroa,	" "
Paulino Avelino,	" "
Perfecta de Guzman,	" "
Captain E. W. Crockett,	" "

5 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Nueva Ecija, Fourth Judicial District.

Criminal Case No. 2079.

THE UNITED STATES
versus
EMILIO VALDEZ and Another.

For Murder.

The attorney for the accused presents a demurrer to the complaint on the following

Grounds.

The Honorable Court has no jurisdiction of the crime of which Emilio Valdez and Francisco Amante are accused.

The facts set out in the complaint do not constitute the crime of murder.

If the allegations made in the complaint were true, they would constitute a legal exemption for the accused.

Arguments.

1st. The tribunal has no jurisdiction of the crime of which Emilio Valdez and Francisco Amante are accused for the reason that in the present criminal case there exist two complaints: One
6 drawn up and signed by the Assistant Attorney, Mr. Antonio Villareal, and the other drawn up by the latter and signed by the Provincial Fiscal, Mr. Santiago Lucero; and the latter is not an amendment of the former.

It is not known, therefore, which of these two complaints should be considered by the Honorable Court, and as long as this uncertainty exists, the competency of the court cannot be determined.

2d. The acts denounced do not constitute the crime of murder for the simple reason that the complaint does not set forth the facts constituting the treachery and malice aforethought.

3d. In the complaint signed by the provincial fiscal, Mr. Santiago Lucero, certain allegations appear which, if true, would constitute a legal exemption in favor of the accused; because it is not conceivable how two men could in eodem tempore fire a shot with the same shot gun.

By virtue of the reasons set forth, the attorney for the defense requests that this demurrer be sustained and that the court order the dismissal of the case.

San Isidro, Nueva Ecija, July 6, 1912.

(Sgd.)

PEDRO CARMEN,
Attorney for Defendants.

Copy delivered to provincial fiscal.

THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of the Province of Nueva Ecija, Fourth
Judicial District.

Criminal Case No. 2079.

Arraignment.

THE UNITED STATES
versus
EMILIO VALDEZ and FRANCISCO AMANTE.

For Murder.

SAN ISIDRO, NUEVA ECIJA, P. I., July 6, 1912.

The accused, Emilio Valdez and Francisco Amante, were present for the purpose of being notified of the complaint, and not being accompanied by counsel, they asked the court for an extension until their attorney, Don Alfredo Chicote, could make his appearance, which request was denied.

The court, in order to protect the rights of the accused, appointed Mr. Silvino de Guzman their attorney de officio and the complaint was thereafter read, but as the services of said attorney were, in the opinion of the court, not satisfactory, he was relieved of his duties and Mr. Pedro Carmen was appointed in his place. The latter asked for time within which to present a demurrer, which petition
8 the court granted, allowing him a period of 24 hours from 5 p. m. of the 5th of July, 1912.

The demurrer having been filed and argued, it was overruled by the court in all its parts.

Court (To the accused Emilio Valdez:) Do you plead guilty or not guilty to the crime of which you are accused?

Accused: Not guilty.

Court (To the accused Francisco Amante:) Do you plead guilty or not guilty to the crime of which you are accused?

Accused: Not guilty.

Court: On petition of the attorneys for the defense and in conformity with the fiscal appearing on behalf of the prosecution, the hearing of this case is set for the 9th day of July, 1912 at 7 a. m., and in order that the rights of the accused may not be relinquished, the appointment of Mr. Pedro Carmen as attorney de officio is left in force for the present.

(Sgd.)

ISIDRO PAREDES,
Judge of First Instance at Large,
Acting in the 4th District.

(Sgd.) ANTONIO VILLAREAL,

Assistant Attorney, Bureau of Justice.

(Sgd.) ESTEBAN DEL ROSARIO, *Clerk.*

(Sgd.) PEDRO CARMEN,
Attorney for Defendants.

9 UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance, Province of Nueva Ecija, 4th Judicial
District.

Criminal Case No. 2079.

THE UNITED STATES, Plaintiff,
vs.

EMILIO VALDEZ and FRANCISCO AMANTE, Defendants.

SAN ISIDRO, NUEVA ECILJA, July 5, 1912.

The above entitled case was called for hearing on the afternoon of this 5th day of July, 1912, before the Honorable Isidro Paredes, Judge, being present Mr. Antonio Villareal, Assistant Attorney, Bureau of Justice, in behalf of the United States; attorney Mr. Felipe Buencamino, Jr., as private prosecutor, and the defendants Emilio Valdez and Francisco Amante.

The defendant Emilio Valdez asked the Court to grant him a reasonable period of time in which to prepare his defense, stating that he did not even have sufficient time to call his counsel Mr. Alfredo Chicote.

The Court denied the request of said defendant and appointed Attorney Silvino de Guzman as counsel de officio.

The defendants were arraigned and the information was read to them, being translated into the local dialect.

De Guzman: I ask that the hearing of this case be postponed inasmuch as it was only on the 3rd that the defendants were advised that this case would be tried this day, and they have not had a chance to take the matter up with the attorney they had engaged for the defense, Mr. Chicote, and for this reason, I repeat, we ask that the hearing of this case be postponed.

10 Fiscal: I object to the request made by the attorney for the defendants, for the reason that the preliminary investigation in this case took place as far back as the 28th of May, this year. The defendant Valdez has been at liberty on bail, he has had all the time that would be needed to bring all the lawyers from Manila, and I understand from reliable information that during that time the defendant had at his disposal five attorneys to prepare his case, all of them residents of this same province. Besides, I know by information from the counsel de officio himself, that the defendant has already engaged Mr. Chicote, and therefore all that the defendant needed to do was to send notice to Mr. Chicote for him to appear before this court, pursuant to his contract, and defend his client's rights.

De Guzman: One of the reasons for which we ask that the hearing of this case be postponed is in order to file a demurrer to the information.

Court: Have you prepared the demurrer already?

De Guzman: No, sir, because I have just read the information and that is why I am trying to file said demurrer.

Court: Do you want half hour's time to prepare the demurrer, even if it is made orally?

De Guzman: Yes, sir.

Court: Well, you are given half hour's time.

(At the expiration of the time allowed the defense, the hearing of this case was continued.)

De Guzman: As *counsel de oficio* for the defendant, and in view of the time given me in which to file a demurrer, I must state that after studying the case, I find that the period of half an hour which has been granted me is not sufficient time to file a demurrer because this is the first time I have seen the information.

11 Court: Then the Court relieves you as *counsel de officio*, and will appoint another, and thanks you. (Mr. Guzman withdraws.)

Court: The defendants are given twenty-four hours' time, and in place of Mr. Guzman, the attorney Mr. Pedro Carmen is appointed as *counsel de officio*. It being five o'clock in the evening now (addressing Mr. Carmen who was present), you will have to file your demurrer by to-morrow afternoon. And as the defendant Emilio Valdez is charged with the crime of murder, it is ordered that his bond be canceled and that he be imprisoned. The Court adjourns until tomorrow afternoon.

Session of July 6, 1912.

The hearing of this case was continued on the afternoon of this 6th day of July, 1912, before the Honorable Isidro Paredes, Judge, being present Mr. Antonio Villareal, Asst. Attorney, Bureau of Justice, representing the United States; Attorney Felipe Buenca-mino, Jr., as private prosecutor, and the defendants assisted by their counsel, Mr. V. Miranda, and Mr. Pedro Carmen, attorney de officio.

Counsel on both sides argued the demurrer filed by the defense.

The Court after hearing the arguments advanced by both parties on the demurrer, overruled the same.

The defense took exception.

The information having been read to the defendants on July 5, 1912, they now answer with the plea of not guilty.

Court: Let the parties produce their evidence.

Miranda: Judge, I wish that the following statements be made to appear on the record: On behalf of the defendants I beg the

12 Court to postpone the hearing of this case until Wednesday afternoon, the 10th instant. This request is based upon the ground that the defendants had previously designated an attorney, Mr. Chicote, to defend this case, as was stated to the Court by the defendant Valdez on the 5th instant before the information was read. Mr. Chicote was not, is not, nor will be able to appear in this Court until Wednesday afternoon, the 10th, for the reason that he has to attend to other cases now pending in another Court

of First Instance which were set for hearing prior to this case. And said defendant desires to state to the Court that the appointment of counsel de officio in this case was not made with defendant's consent, as he already had chosen an attorney to defend him; therefore, he wishes that his choice of Mr. Chicote, as his counsel, be maintained.

Fiscal: I object to the request made by the defense to postpone the hearing of this case until Wednesday, for the following reasons: In the first place, by postponing the hearing until Wednesday, the Government will have to defray the expenses of the special Judge, special stenographer and special fiscal who have been sent here to attend to this case. In the second place, the defendant has been at liberty on bail since June 3 of this year and has had more than sufficient time to prepare his proofs and choose the lawyer that he needed. And in order that he might be prepared, the defendant could have telegraphed to Manila advising his attorney that the hearing had been set for the 5th of this month. According to a statement made by the defendant himself, he went to Manila on July 4th and finding that his attorney was attending a banquet, he returned to Nueva Écija without worrying whether his attorney was able to come or not to San Isidro to appear at the hearing.

13 This morning your Honor asked the attorney de officio of the defense to discuss the demurrer. The attorney alleged that the defendant did not seem to have confidence in him and *and* advised the latter to wait until the arrival of the attorney from Manila. Now, however, he appears before your Honor with a demurrer and discusses the grounds of the demurrer, which shows that the defendant has finally relied on his attorney de officio appointed by the Court. In the third place, I understand that the law firm of Messrs. Chicote and Miranda is composed of Mr. Chicote and Mr. Miranda and, therefore, if the first named gentleman is unable to appear, the second ought to be able to do so, inasmuch as Mr. Chicote's interests can also be very well attended to by Mr. Miranda.

Miranda: It is not on account of the preparation of the defense, but as I stated, it is impossible for Mr. Chicote to be here, to appear here, and, therefore, I protest, Judge, that the hearing proceed.

Fiscal: I insist on my objection to a suspension of the hearing.

Court: In view of the allegations just made by Mr. Miranda in Mr. Chicote's behalf, the Court will grant the defendants a period of time to prepare their defense, which will expire in two days from now. All persons charged with a crime are entitled to that period of time under the Code of Procedure in force, and I deem such time sufficient, taking in consideration the fact that the defendant Valdez ought to be well prepared for this defense, first, because it appears that he has waived his right to a preliminary investigation; second, because, as he said yesterday, he had already engaged the services of Mr. Chicote; and third, because if he was unable to bring Mr. Chicote here, he could have brought another attorney of his law firm, as in fact he did, by having Mr. Miranda here to represent

14 said law firm. In regard to Mr. Miranda's protest, the Court must state that he has been misinformed here, and the defendants appeared without being attended by any attorney, notwithstanding the fact that, according to information that this Court has, prior to yesterday five attorneys were here all the time at the disposal of the unprotected; however, the Court, in order to protect the defendants' rights, appointed first Mr. Silvino de Guzman, as counsel de officio. As this gentleman did not discharge his duty satisfactorily, in the opinion of the Court, Attorney Pedro Carmen was appointed by the Court to take the place of said De Guzman, the first named attorney being better informed of the case because it appears that he intervened in the preliminary investigation. The matter with the defendant yesterday was that he did not want to be arraigned, and it appears to me that no accused has a right to refuse to be arraigned. Therefore, the hearing of this case is postponed until Tuesday, the 9th instant, at half past seven in the morning; but the Court, in order to better protect the defendant's right, does not wit-draw Mr. Carmen's appointment to act as counsel de officio for the defendants, and the Court adjourns until that day.

Session of July 9, 1912.

This case having been called again in the morning of this 9th day of July, 1912, to continue the hearing before the Honorable Isidro Paredes, Judge, there appeared Messrs. L. M. Southworth and Carlos Ledesma, as attorneys for the defendant Francisco Amante? Attorneys Alfredo Chicote and Vicente Miranda for the defendant Emilia Valdez; assistant attorney of the Bureau of Justice, Mr. Antonio Villareal, on behalf of the United States; Attorney Felipe Buencamino, Jr., as private prosecutor, and Attorney Pedro
15 Carmen as counsel de officio.

EVIDENCE FOR THE PROSECUTION.

Testimony of Juan Gatmaitan.

After being sworn in legal form, he states that his name is Juan Gatmaitan, 30 years old, a widower, farmer and resident of the barrio of Manguinoo, municipality of Gapan, province of Nueva Ecija, P. I. (Interpreted by Mr. Antero Gempezao.)

Chicote: The defense would like to be informed by the Court whether a complaint or information has been filed with this Court against this witness Juan Gatmaitan for the same crime charged in this case.

Court: The Court knows nothing whatever of it; the fiscal will be able to answer your question.

Fiscal: Yes, sir; one has been filed for the same crime.

Chicote: Has the information already been entered in the Court register?

Fiscal: Yes, sir.

Questions by the Fiscal to the witness:

Q. Do you know Emilio Valdez?

A. Yes, sir.

Q. Where is he?

A. There he is (indicating the defendant, Emilio Valdez).

Q. When did you know him for the first time?

A. On an occasion when I was looking for sugar cane seed.

Q. Did Emilio Valdez say anything to you on that occasion?

A. All that he said to me was that he wished to win my friendship.

Q. What else did he tell you, if anything?

16 A. Nothing else, and we parted.

Q. Did you see him again after that time?

A. Yes, sir.

Q. Where?

A. In his seedfield.

Q. Whose seedfield?

A. Of Emilio Valdez.

Q. Did you speak to each other there?

A. Yes, sir.

Q. What did you talk about?

A. Emilio Valdez offered me a business which, according to his statement, was an easy one. I asked him what kind of business it was, and he said that before he would tell he had to warn me that it would not be well to say anything to any one about it. This business was that I should kill Eusebio Yuson and that he would pay me P900.

Q. And what was your answer?

A. I told him that I could not please him because I was very busy with my work and no one could relieve me in said work.

Q. And what did he say?

A. He told me to say nothing about it to any one, and thus we parted afterwards.

Q. Did he tell you why he wanted to kill Eusebio Yuson?

A. He did not tell me, but only made me that offer.

Q. But who is that Eusebio that you refer to?

A. That Eusebio Yuson who died during the past dry season.

Q. And after that occasion did you see Emilio Valdez again?

A. Yes, sir.

17 Q. Where did you see him?

A. On the street, near his house.

Q. And what did Emilio Valdez tell you that time?

A. He only asked me why I retired.

Q. And when you met Emilio Valdez again in the town, did you see any other person?

A. Yes, sir.

Q. Who was he?

A. Lucas Figueroa.

Q. How did you see Lucas Figueroa there?

A. Because he was going to his tenant's house and passed by there.

Q. And what did Lucas Figueroa do there?

A. I saw Emilio Valdez offer him there two banknotes of ten pesos each, and that was what I heard.

Q. Do you remember when that was?

A. I do not.

Q. Do you know on what day Eusebio Yuson was killed?

Ladesma: We object to that question because it relates to a fact not proven.

Fiscal (continuing): I withdraw the question.

Q. After that time that you saw Emilio Valdez in the town, did you see him again?

A. Yes, sir.

Q. When?

A. One Sunday.

Q. Where did you see each other?

A. In my hut of my sugar-cane fields.

Q. What hour of the day did he go to see you?

A. I think it was after five in the evening when he was there.

A. And what did Emilio Valdez say to you?

18 A. He invited me to return to town to take a walk.

Q. And what did you do?

A. I followed him and rode in his calesa.

Q. Where did you go?

A. To his house.

Q. While you were in the calesa, what did Emilio Valdez tell you, if anything?

A. He told me nothing.

Q. And what did you do upon arriving at the house of Emilio Valdez?

A. He left me in the street and went up into the house.

Q. And afterwards?

A. When the bell struck the time of the evening prayer (sunset), as he did not come down from the house I thought that he was praying.

Q. And did you see him again that night?

A. Yes, sir.

Q. Where did you see him?

A. In his own house.

Q. And what did you people do there?

A. He gave me the shotgun.

Q. What shotgun did he give you?

A. A double-barreled gun.

Q. I am showing you this double-barreled gun and state whether the one given to you that night by Emilio Valdez is like this or not?

A. As that shotgun was in a case, in my opinion it was similar to this.

Q. And what did you do when you received the shotgun?

A. He still invited me to go towards Loasan.

Q. And what did he do?

A. He followed me.

19 Q. Where did you people go?

A. To the house of Lieutenant Eusebio Yuson.

Q. When you people were going to the house of Lieutenant Eusebio Yuson, did you see any other person?

A. We did not see any one.

Q. Where did you first stop?

A. In a store which is at the angle of a corner going up, or rather, to the east of Lieutenant Eusebio Yuson's house.

Court: (To the interpreter) Mr. interpreter, repeat what the witness said.

Interpreter: We stopped at a store which is at the angle of a corner beyond the house or to the east of Eusebio Yuson's house.

Fiscal: (continuing)

Q. While you were there near that store, did you see any person?

A. We were there talking and Lucas Figueroa arrived.

Q. With whom were you talking?

A. With Emilio Valdez.

Q. And what did Lucas Figueroa tell you?

Chicote: The question is leading.

Fiscal: I withdraw the question.

Q. Did Lucas Figueroa say anything to you?

A. Yes, sir.

Q. What did he tell you?

A. He told us that Lieutenant Eusebio Yuson was already there and asked us what we were still doing there.

Q. And what did you do then?

Ledesma: I object to the witness answering to any question that may tend to incriminate him.

Court: I suppose that the witness cannot be deprived of his rights.

20 Chicote: I believe it is the duty of the Court to inform the defendant of the situation in which he is now. This defendant is not free, nor, as far as I know, has he had an opportunity to confer with any one, and the Court being aware of the existence of an information against him, already filed with this same court, I believe it is the duty of the Court to call his attention in the matter of the facts about which he is to testify.

Court: I don't know what warning to make to the witness. The best thing is for you to do it in the form of cross-examination. I suppose and presume that under the law you may cross-examine the witness and in your questions warn him about anything you like; therefore, I allow the defense to make such questions as it may desire in the cross-examination.

Ledesma: (cross-examination).

Q. You know that you are not required to answer a question by which you may be accused and convicted in this or in any other case.

A. I will answer what I have already answered.

Q. Are you accused, in another case, of the same crime which is now being tried here?

A. No, sir.

Q. Who brought you here to testify?

A. The constabulary.

Q. Were you warned by them that your testimony in this case might hurt you?

A. They said nothing to me.

Q. Were you promised that you would be let free after testifying here to-day?

A. No one has made such promise to me.

Q. Well, have in mind that when you are asked about an act of which you may be accused and convicted, you must not answer the question if you do not like?

21 A. When I don't understand, I will not be able to answer.

Chicote: (cross-examining)

Q. Do you believe or do you know that if you kill a man, you have by law a penalty of life imprisonment or death—do you know that?

A. Yes, sir; I do.

Q. Do you know also that when you yourself say: "I have killed that man" then the penalty of the law will be imposed upon you?

A. No sir.

Q. Well, have in mind that if you state that you have killed a man, you will in turn be killed by justice or be thrown into prison for life.

A. Yes, sir.

Q. Do you think, Gatmaitan, that a man who has killed another may be exempt from the penalty, just because a fiscal, a clerk of court, a constabulary soldier or chief, or any other authority tells him: "if you say that you have killed, you shall not be punished in any way"; do you believe that such thing is possible?

A. No sir.

Q. Didn't you know that or did you not understand it well?

A. I cannot answer those questions; I do not understand them.

Q. Have in mind, Gatmaitan, that if you plead guilty of the crime of homicide or rather of murder, you will necessarily be convicted, even if a constabulary soldier or chief, a fiscal, a clerk of court, a warden or any other authority or person should offer and promise you that if you confess to the crime you will be acquitted or that you will be convicted if you do not recognize the law.

22 A. Yes, sir.

Q. You know that Emilio Valdez and Francisco Amante are accused of having caused the death or helped to cause the death of one Eusebio Yuson?

A. They have helped.

Q. You know they are accused of that?

A. Yes, sir.

Q. And you know that at the same time they were accused you

have also been accused in order that you may be punished for the same crime?

A. Yes, sir.

Q. You are warned that if you do not wish to testify on account of being accused of this same crime, neither the judge nor any other authority can compel you to testify here.

A. Yes, sir.

Fiscal:

Q. After Lucas Figueroa told you that Lieutenant Eusebio Yuson was already arriving, what did you do?

A. We approached the house.

Q. Where did you locate yourselves?

A. In a fence near the staircase.

Q. And what did you do upon arriving there?

A. After we arrived there, Lieutenant Eusebio Yuson arrived also.

Q. And what did you do when Lieutenant Eusebio Yuson arrived?

A. Emilio Valdez ordered me to shoot.

Q. And what did you do?

A. I tried to shoot, but the gun would not go off.

Q. And then?

23 A. He approached me and said: "son-of-a-whore", he was able to go up already and you won't shoot yet", and he showed me how to shoot and right at that moment the gun went off.

Q. When you people were waiting for Lieutenant Eusebio Yuson, did you hear any other person there?

A. No sir.

Q. But did you hear any voice?

A. Yes, sir; to the east of the place where we were.

Q. Whose voice?

A. Of Mateo Arcilla.

Q. Besides that voice, did you hear any other?

A. No, sir.

Q. Do you know what the people at the house were doing when Lieutenant Eusebio Yuson came?

A. We did not know what they were doing.

Q. Did you hear any person speak in the house?

A. Yes, sir.

Q. Whom did you hear?

A. I heard a woman's voice.

Q. What did the woman say?

A. She commanded Lieutenant Eusebio Yuson to pass under the house, but as he was already on that staircase he did not care to go back.

Q. What did you do after the shot?

A. I ran away leaving Emilio there.

Q. And what about the shotgun that you carried?

A. I left it with him.

Chicote:

I ask the Court to have the interpreter read to the witness the

testimony marked as exhibit "A" which appears at page 11 of the case.

24 Court:

First, show it to the witness, Mr. Chicote, because if he does not know it, why are you going to read the document to him? or better do it in the form of cross-examination.

Chicote. (To the witness.)

Q. Have you ever testified before now?

A. No sir.

Q. Never?

A. When we were arrested and taken before the justice of the peace.

Q. Is it not true that before going to the justice of the peace you testified before the constabulary captain?

A. Yes, sir; because we were under arrest.

Q. When you testified before the constabulary captain, was any one writing down what you testified?

A. Yes, it was written down.

Q. Who was writing it down, a lieutenant of the constabulary?

A. Yes, sir.

Q. The captain asked the questions to you and the lieutenant wrote, is it not so?

A. It was the lieutenant who asked the questions to us.

Q. And it was also the lieutenant who was writing?

A. Yes, sir; when he arrested us.

Q. Did the lieutenant or any other person write on a typewriter your testimony?

A. I now remember that the one who wrote that testimony was that gentleman (pointing to Mr. Felipe Buencamino).

Q. And after it was written, did they show you that testimony?

25 A. Yes, sir.

Q. Did you sign the testimony there?

A. Yes, sir.

Q. Who told you to sign, the lieutenant, the captain, or Mr. Buencamino?

A. Mr. Buencamino.

Q. And did you sign it right there?

A. Yes, sir.

Q. And after that, you were taken to the justice of the peace; isn't that so?

A. Yes, sir.

Q. Then, there, they talked with the justice of the peace; isn't that so?

A. Yes, sir.

Q. Then the justice of the peace wrote also?

A. Yes, sir.

Q. And afterwards you all left; you were again taken to the jail, isn't that so?

A. Yes, sir.

Q. The justice of the peace did not say anything to you; isn't that it?

A. No, sir.

Q. He said absolutely nothing to you?

A. He only took my oath as to the truth of my statements.

Q. How did he take your oath? What did the justice of the peace do or say at that moment?

A. He asked us whether it was we who had killed Lieutenant Eusebio.

Q. What else did the justice of the peace say to you?

26 A. Only that.

Q. Nothing else? didn't he say anything more?

A. He did not say anything more to us.

Q. Nothing at all?

A. No, sir.

Q. I show you this document marked Exhibit "A" in case No. 279 of this Court, and state whether you have seen this writing before now?

A. I cannot tell exactly whether or not this is the one, due to my little knowledge of it.

Q. But, have you at any time before now seen this paper with your own eyes? (placing before the eyes of the witness said exhibit appearing on page 11 of the case.)

A. I therefore answer that I cannot exactly tell whether this was the document because I did not know that paper.

Q. Now, state if you have ever seen this other paper on page 12 of the same case (showing the document to the witness).

Court: The government has not offered in evidence any of these papers, but only the testimony of the witness himself, and, therefore, I fail to see much materiality in so much cross-examination so far made in regard to that paper, and I would like to see what you are aiming at.

Chicote: This is an affidavit made by the defendant and attached here to this case; the witness has just now made some statements here entirely different from those which appear in this affidavit.

Court: If they are different, well, all right; I did not know that.

Chicote (continuing): When did you use this paper on page 12 of the case (showing the document to the witness).

A. This seems to be the same paper that we prepared there in the office of the constabulary captain.

27 Q. Do you know what stain is this that appears on this paper on page 12 between the words Juan and Gaimaitan?

A. I believe this is my finger print.

Q. Whose finger?

A. Mine, surely.

Q. Do you know how to read Spanish?

A. No, sir.

Q. Do you know how to write in Spanish?

A. No, sir.

Q. Do you know how to read or write in Tagalo?

A. No sir, I cannot read.

Q. And write?

A. Nor write either.

Q. Can you sign or write your name on paper?

A. No sir, I do not know how.

Q. Have you seen this person, which is shown here as "José Guanio" sign?

A. I do not know him.

Q. Did you see him sign on this paper, did you see him sign his name?

A. I only saw Mr. Buencamino.

Q. Was he the only person there when you pressed your finger to make this print?

A. He was with the captain.

Q. Did you see this person which is shown here as "Ludovico J. Morales, Juez de Paz" sign?

A. Justice of the Peace, where?

Q. Justice of the peace of Gapan, surely.

A. Yes, sir; I saw him, he is the justice of the peace of Gapan.

Q. Did you see when he signed?

A. Yes, sir.

28 Q. Before stamping your finger print on this, did they tell you in Tagalo what this paper contained?

A. Yes, sir.

Q. Who translated or put into Tagalo the contents of this document?

A. The judge.

Q. The judge of what place?

A. Of Gapan.

Q. The same one who signed here, Mr. Morales?

A. Yes, sir.

Chicote: I ask that the contents of this document be translated to the witness.

Court: Let the contents of the document be translated.

Chicote: (to the witness.) The contents of this document will be read and interpreted to you, in order that you may answer whether it is the same one that you signed. (The interpreter translates orally into Tagalo the contents of said document.)

Witness: It is the same one, yes sir.

Chicote: (Continued.)

Q. Is that the same thing that was said or read to you by the justice of the peace, that which was just translated to you by the interpreter?

A. Yes, sir.

Q. Was that the same that you swore to before the justice of the peace?

A. Yes sir.

Q. And What is stated there is the truth in this affair?

A. Yes sir.

29 Q. So that if you make a statement contrary to that one, such a statement is false?

A. No sir.

Q. The two statements would be true, is that so?

A. Whatever I say is true.

Q. You have stated that you knew Emilio Valdez since you were looking for sugar-cane seeds; when was that, in what year?

A. The past dry season.

Q. And there had never been any talk between you and Emilio; isn't that so?

A. We only talked three times.

Q. But prior to that date when you were looking for sugar-cane seeds, he told you that he would like to become your friend; isn't that so?

A. Yes, sir.

Q. And did he tell you anything more?

A. No.

Q. You say that you saw him afterwards in Emilio's seedfield?

A. Yes, sir.

Q. When was that?

A. At the time of the harvest.

Q. When was that, about the month of December or January?

A. December or January, last.

Q. Was it then when he spoke to you about some business which had to be kept absolutely secret, so that no one should know it, isn't that so?

A. Yes, sir.

Q. On that occasion did he tell you nothing else but that, or did he only tell you that "I am going to give you a big business"; did he not tell you anything else but that?

30 A. No.

Q. Afterwards, did you see Emilio Valdez in the street?

A. Yes, sir; near his house.

Q. How was that, did you go to find Emilio, or did Emilio go to find you? Explain how you came to meet there.

A. No, sir; I came from taking a walk and as I passed there I met him.

Q. And it was then when he spoke to you, telling you or proposing to you to kill Eusebio Yuson; isn't that so?

Fiscal: I object to the question because the witness did not say he told him that on this occasion.

Court: It is a fact that he did not so state; therefore, I sustain the objection.

Chicote: My exception.

Q. Was there anything spoken between you and Emilio when you met in the street near Emilio's house on that occasion?

A. We did not speak anything to each other; I only saw Lucas Figueroa talking with him.

Q. Was Lucas Figueroa talking with Emilio when you arrived?

A. Yes, sir.

Q. Did you ask Lucas about anything?

A. No sir.

Q. You have stated that Lucas was there because he was going to his principal's house?

A. Yes, sir.

Q. You know that because Lucas asked you where you were going?

31 Q. Is it not true that Lucas Figueroa was not standing when you saw him, but that he was going in the direction of his master's house passing through a road or a narrow street?

A. He was already coming from there, from a narrow street which goes in the direction of Valdez's house.

Q. And then you were already going home when you met him there?

A. Yes, sir.

Q. Afterwards you saw Emilio Valdez again about five o'clock in the evening; isn't that so?

A. Yes sir.

Q. When was that, do you remember?

A. I do not remember the month when that took place.

Q. Nor the date either?

A. No.

Q. Nor the day of that week either?

A. According to my recollection, it was a Sunday.

Q. He invited you for a walk?; isn't that so?

A. Yes, sir.

Q. And he took you to Emilio's carromata?

A. Yes, sir.

Q. What is the distance from the place where you saw Emilio on that occasion to the house of said Emilio; how long would it take in a carromata?

A. I think more than one hour.

Q. While on the way, from that place to Emilio's house, Emilio said nothing to you; you did not speak to each other; isn't that so?

A. Nothing.

32 Q. Afterwards you arrived, and upon arrival at Emilio's house, he went up into the house?

A. Yes, sir.

Q. He did not tell you anything either when he came down from the house; isn't that so?

A. Yes, sir.

Q. And at that time he said nothing to you either; he only handed you the shotgun; isn't that so?

A. Yes, sir.

Q. That occurred when the corromata was exactly in front of the door of Emilio Baldez's house; isn't that so?

A. Yes, sir.

Q. You know that that was the time of the evening prayer, because you heard the church bells strike the hour of the evening prayer?

A. Yes, sir.

Q. Gatmaitan, where is Eusebio Yuson's staircase; is it on the right side or on the left side of the house, looking from the street?

A. As I have been able to notice, the stair overlooks the road, the street.

Q. Is the stair inside the house or outside the house?

A. The stair is outside.

Q. Gatmaitan, is it not true that that house had a fence around the whole lot?

A. Yes, sir.

Q. What was the height of that fence?

A. It came up to a man's breast, more or less; about four feet.

Q. The fence was all bamboo; isn't that so?

A. Yes, sir.

33 Q. Is it not true that you placed yourself inside the lot and inside the fence on the side of the stair?

A. No, sir.

Q. Did you go up the stair?

A. No, sir.

Q. Where did you place yourself?

A. Outside of his lot, on the road.

Q. But, did you go to Yuson's house?

A. Yes, sir.

Q. You state that you went there for the purpose of killing Eusebio Yuson?

A. Yes, sir.

Q. You state that you located yourself in a place waiting for Eusebio Yuson?

A. Yes, sir.

Q. What was that place where you stationed yourself to wait for him?

A. Beside a tree the name of which I do not know and near the stair.

Q. Were you inside the fence of the house or outside the fence?

A. Outside the fence.

Q. Were you out in the street; isn't that so?

A. We were beside the house, near the stair and about in front of it.

Q. How many steps away from the house were you?

A. I cannot tell exactly because I do not know the place and do not go there frequently.

Q. But, more or less, what was the distance from the place where you were to the stair?

A. I would estimate it at six yards or brazes more or less.

34 Q. From your place to the stair?

A. Yes, sir.

Q. Did Lucas Figueroa speak to you when you were already at that place waiting for Lieutenant Yuson; isn't that so?

A. Yes, sir.

Q. Is it not true that Lieutenant Eusebio Yuson arrived in a corromata?

A. Yes, sir.

Q. Is it not true that when Lieutenant Eusebio Yuson's carromata arrived, Lucas Figueroa had already gone away?

A. Yes, sir.

Q. Do you think there was time enough to take forty steps from the time Lucas Figueroa left until Lieutenant Eusebio's corromata arrived?

A. I cannot say that because we were not able to tell exactly the distance from Lucas Figueroa, because the night was dark.

Q. Why, had it been some time already since he left until Lieutenant Eusebio arrived?

A. Yes, sir.

Q. Do you think it was half an hour, or a little less, from the time he left until the carromata arrived?

A. Something like that, so far as I can remember.

Q. Is it not true that when Lieutenant Eusebio went in the direction of the stair, a lantern was put out of one of the windows of the house in order that he might go up the stair?

A. I understood it to be that way according to the light; but the light was carried to the stair from inside the entrance under the house.

Q. Did you see the person who carried the light at the
35 entrance under the house?

A. No sir, because the house is made of wood.

Q. Is it not true that near where you were there is a small nipa house where Eusebio Yuson's groom and family lives?

A. When we went near there, there were no people.

Q. Were there no dogs either?

A. No sir.

Q. At what distance were you from that small nipa house?

A. I cannot estimate the distance, because I did not notice carefully that house.

Q. Was there a light in that house?

A. No sir.

Q. In the small one?

A. No sir.

Q. But you know that there were no people because you could see that there were none inside the house?

A. Yes, sir.

Q. And you could see also that there were even no dogs inside the house?

A. Yes, sir; because, had there been any dogs, they would have barked.

Q. Now you say that the first time you fired at Lieutenant Eusebio, you fired the gun and the shot would not come out; isn't that so?

A. Yes, sir.

Q. Is it not true that you pulled the two triggers at the same time then?

A. Yes, sir.

Q. And still the shot would not come out?

A. Yes, sir.

Q. Then you raised both triggers again, isn't that so?

36 A. It was Emilio Valdez who showed me how to do it, and pulled the trigger.

Q. But Emilio Valdez took hold of your hand and made you pull the trigger and raise it again; isn't that so?

A. I was holding the shotgun this way (the witness holds the shotgun and shows the position) and he was showing me how to shoot, saying: "this way, this way" and without more ado the shot came out, the shotgun fell, and I was frightened.

Q. Have you handled firearms many times?

A. No, sir.

Q. Have you ever handled any shotgun like this for hunting purposes?

A. No, sir; I did not use to go out hunting.

Q. Is it not a fact that you never have been a shooter with a firearm, nor that no one knew that you were a shooter?

A. No one.

Q. Will you show the Court how you did in order to shoot with this shotgun? Or rather, when you fired or when you held the gun and fired, you heard the noise pic, pic, caused by the trigger, but the shot did not come out; isn't that true?

A. I did not notice.

Q. And how do you know that it was not fired?

A. Because the shot did not come out.

Q. Let us see; try to shoot with this gun (handing the witness the shotgun).

A. I was holding it this way (showing the court the position of the gun when it was fired).

Q. Were you in that position when you fired and the shot failed to come out?

A. No, sir; I was this way (the witness assumes a squatting position with his right foot behind and resting the butt of the gun on his right thigh).

Q. But what did Emilio do with the shotgun to cause it to fire?

A. He told me to place the shotgun in a certain way saying: "this way, this way," and touched it so much that it went off, and I dropped the gun.

Q. You dropped the shotgun at your feet and in the same place where you had your feet; isn't that so?

A. Yes, sir; because I was frightened.

Q. And you ran away from that place; isn't that so?

A. Yes, sir.

Q. You know nothing more?

A. No sir.

Q. How long was it from the time you went to shoot until Emilio came and touched the shotgun, was it about ten minutes or a quarter of an hour?

A. No sir; he had been behind me from the beginning.

Q. Is it not true that when the shotgun was fired off Lieutenant Eusebio Yuson was on the first step of the stair going up; that it was just when he put his foot on the step that he was shot?

A. No sir; he was already on the second step of the upper end of the stair when the shot was fired, and, as I say, Lieutenant Eusebio Yuson was already on the second step when Emilio Valdez

said to me: "son of a whore, why won't you hurry up?" Eusebio was nearly upstairs already and I answered him that I was shooting, but the shot would not go off, and it was then that the shot went off.

Q. And what did Emilio say to you from the time Eusebio entered the door until he reached the stair?

A. He told me to be ready because he was coming already.

38 Q. And what did he tell you from the time he reached the stair until he went up to the first step or landing place of the same?

A. He told me that if I did not fire he would shoot me.

Q. While that was taking place, is it not true that Mateo Arcilla said to Emilio Valdez: *acó po ang ma barrel*?

A. No sir.

Q. Where was Mateo Arcilla at that moment?

A. He was following us but I do not know what direction he took.

Q. And is it not true that after the shooting, and when all was over, you and Mateo carried away the shotgun and delivered it to Francisco Amante in Emilio Valdez's house?

A. No sir.

Q. What place was it where you returned the shotgun to Francisco Amante?

Fiscal: I object to the question.

Chicote (continuing):

Q. Where and to whom did you deliver the shotgun?

A. I left it there with him because he was going with me.

Q. So that it is not true that you and Mateo Arcilla returned to the place where Emilio Valdez's house is and there delivered the shotgun to him?

A. No sir.

Q. And after the shooting where did you go?

A. We ran away.

Q. Who was with you when you ran away?

A. Mateo Arcilla was ahead of me.

Q. Mateo Arcilla ran also; isn't that so?

A. Yes, sir.

39 Q. And is it not true that Lucas Figueroa was also running away together with you?

A. I did not see Lucas Figueroa any more at that time.

Q. Is it not true that Emilio Valdez ran also following you?

A. I did not take any further notice of him, because the night was dark.

Q. And where did you go?

A. We went in the direction of a narrow street that leads to the field.

Q. And after you had been at that place where did you go?

A. I retired to my house.

Q. In what place or barrio of the town is your house?

A. In the barrio of Manguinoo.

Q. Is that the place where you embarked with Emilio on that occasion?

A. Yes, sir.

Southworth (cross-examination):

Q. Can you shoot with this shotgun (showing the shotgun itself)?

A. No, sir.

Q. If this shotgun was given to you to shoot, why don't you know how to shoot?

A. This shotgun is similar to that one.

Q. How would you shoot with any other shotgun; or rather, do you or do you not know how to shoot with this shotgun?

A. No sir.

Q. Do you know what this piece adhered hereto means (referring to the trigger)?

A. In my opinion, this is where you pull.

40 Q. Is it fired thus, in this manner? (holding the first finger on the case of the safety trigger)?

A. I cannot say if it is that way, because I placed the butt of the shotgun under the left arm.

Q. Is that the way you did to shoot, placing the butt between the right arm and the side of your body?

A. Yes, sir; but it would not shoot.

Chicote:

Q. Did you tell Emilio Valdez that you knew how to shoot with a shotgun?

A. I did not.

Ledesma: I have one question to ask also, Judge.

Fiscal: I believe there ought to be but one direction.

Southworth (continuing):

Q. Are you a friend or an enemy of Eusebio Yuson?

A. No sir.

Court (to the witness): What do you mean, that you are a friend or an enemy?

A. That Eusebio Yuson and I are not on bad terms.

Southworth (continuing):

Q. How many times did you see Eusebio Yuson?

A. Since when?

Q. Since you were born?

A. Many times, because he lives in the town of Gapan.

Q. Have you ever been at the house of Eusebio Yuson?

A. Once only.

Q. When was that?

A. A long time ago; when my principal went there to buy rice, and I went to get the rice.

Q. Was that the only time you have been at that house?

A. Yes, sir.

41 Q. When was it that you were at that house on that occasion?

A. As I estimate it, two years ago.

Q. The truth is that you have never been in that house except on that occasion?

A. Yes sir.

Q. Have you been on the stair of that house on any other occasion?

A. No sir, because I did not go up.

Q. Is it not a fact that you have been in that house in company with the constabulary captain?

A. No sir; we did not go there.

That is all.

Fiscal:

Q. In the testimony given by you in this Court there are certain circumstances which do not appear in your testimony set forth in the affidavit, Exhibit "A," made before the justice of the peace of Gapan; can you explain to the Court why you failed to mention certain facts on that occasion?

A. If we did not make those statements it was due to the fact that we were afraid.

Q. Of whom were you afraid?

A. Of Emilio Valdez.

Q. Why were you afraid of him?

A. He said that if he went to jail on account of our telling these things, he would have us killed because they have great power in Gapan.

Q. Can you repeat what Emilio Valdez said to you the second time you saw him in his estate at Santo Cristo?

A. If you ask me.

Q. Go on and state.

42 A. At first when he spoke to me at his house in the field, he only told me that he wished to win my friendship.

Q. And on the second time, what did he tell you?

Ledesma: I object to the question; it would be a repetition of the statements already made by the witness:

Fiscal: I withdraw the question.

(Continuing.)

Q. When met Emilio Valdez in the town of Gapan, on which occasion you saw Lucas Figueroa, was it the same day of the death of Eusebio Yuson?

Ledesma: I object to the question because it is leading.

Court (to the fiscal): Ask him when that was.

Fiscal (to the witness):

Q. When was that interview that you had with Emilio Valdez and Lucas Figueroa, in relation with the day of the occurrence?

A. Two weeks before the occurrence.

Q. Where were you and Emilio Valdez when Lucas Figueroa came to tell you that Eusebio Yuson was coming?

A. In an uninhabited store situated at an angle of a narrow street.

Fiscal:

Q. Was there a fence or not in the place where you stationed yourselves to fire against Eusebio Yuson that night?

A. Yes, sir; there was a fence.

Q. Was there a fence or not in the place where the tree was standing?

A. The tree is beside the fence.

That is all.

43

Testimony of Mateo Arcilla.

Being duly sworn, he states that his name is Mateo Arcilla, 30 years old, married, a farmer and resident of Santo Cristo, Gapan, Nueva Écija, P. I. (interpreted by Antero Gempezao.)

Direct questions by the Fiscal:

Q. Do you know Emilio Valdez?

A. Yes, sir.

Q. Where is he?

A. There he is (pointing to the defendant Emilio Valdez).

Q. Do you know Francisco Amante?

A. Yes, sir.

Q. Where is he?

A. He is there (pointing to the defendant Francisco Amante).

Q. Do you know one Victor Robaya?

A. Yes, sir.

Q. Have you seen any letter in Victor Robaya's possession?

A. Yes, sir.

Q. How did you get to see that letter?

A. Because we went to a funeral.

Q. And why did you see that letter?

A. Because when Victor Robaya and I were going home, I asked him what had his principal given him.

Q. Who was his principal?

A. Emilio Valdez.

Q. And who was your principal at that time?

A. The last year, Sotero Padiernos; now Emilio Valdez.

44 Q. Did you read that letter?

A. Yes, sir.

Q. What did that letter say?

Ledesma: I object to the question, the best evidence is the letter itself.

Court: Objection sustained.

Fiscal:

Q. Whom was that letter for?

A. For Emilio Valdez.

Q. From whom did that letter come?

A. From Emilio Valdez.

Q. To whom was that letter addressed?

Miranda: That is cross-examining his own witness, Judge; consequently, I object to it because it is an improper question.

Court: Objection overruled.

Witness:

A. To Francisco Amante.

Fiscal (continuing):

Q. And what did Victor Robaya do with that letter?

A. When we arrived to the dead man's house and took dinner, he went down stairs and went in the direction of the camarín.

Q. To which camarín did Victor go?

A. To the camarín in the mill.

Q. Whose camarín was that?

A. Of Emilio Valdez.

Q. And who was there on that occasion?

A. I did not go to the camarín.

Q. After that occasion what did you do after having met Robaya?

A. I retired.

45 Q. Where did you first go?

A. I went in the direction of the camarín.

Q. Did you meet any person there?

A. Yes, sir.

Q. Whom did you meet?

A. Francisco Amante.

Q. And what did Francisco Amante say to you, if anything?

A. He said "are you here Mateo?"

Q. And what did you answer?

A. Yes, sir.

Q. And what else?

A. He told me to accompany him as he retired; I answered him to pardon me because I was very tired, for I had just come from making a grave for a child, and besides my hands were aching, but he insisted that I should accompany him to carry a gun.

Q. And what did you do?

A. On account of his request I followed him.

Q. How did you go?

A. On a "carromata".

Q. Did that Francisco Amante tell you anything when you were in the "carromata?"

Southworth:

The defense of the defendant Valdez objects to the declarations made by any of the other codefendants, in the sense that they are

declarations of a codefendant against another, and are not competent, unless a conspiracy is first proven.

Miranda: It is our objection which we have authorized Mr. Southworth to make.

46 Court: All right; but let the witness answer if Francisco Amante told him anything or not while in the "carromata."

Witness: Yes sir, he did.

Fiscal (continuing):

Q. What did he tell you?

A. Not to tell any one that we had carried the shotgun that night.

Q. And where did you go?

A. To his house in the town.

Q. And upon arriving there to which house did you go?

A. To Emilio Valdez's house.

Q. And what did you do there upon your arrival?

47 A. When we arrived in front of the bakery, which is alongside the house, he alighted and went up into the house.

Q. And what did you do?

A. He left me there, and as he was tardy in returning I also alighted from the carromata and went away.

Q. When was that you accompanied Francisco Amante?

A. March 16th.

Q. After that date did you see Emilio Valdez?

A. Yes, sir.

Q. When?

A. One Sunday.

Q. How many days after the 16th did you see him?

A. The following day.

Q. Did you speak of Valdez when you met?

A. Yes, sir.

Q. What did you say?

A. I came from hearing mass and went to his house, and on the lower floor of the house I met Emilio, who called me and said: "Mateo, come here"; and he asked me if I would like some good business, and I asked him what the business was, and he told me that I was to kill Eusebio Yuson, and that he would give me the gun and pay me 1,000.00.

Q. And what answer did you make?

A. I told him that I could not kill him because I was afraid.

Q. And afterwards, what did he say to you?

A. And accordingly I asked him why Lieutenant Eusebio had to be killed, his being a good man and compassionate.

Q. What more?

A. And accordingly, as I did not wish to accept that offer, he told me: "Be careful, because if you say anything of this, I will kill you."

48 Q. He said that to you because he wanted to send you to kill Eusebio Yuson?

A. He told me he had a disagreement with him.

Q. And what did you do after that?

A. I bade him goodbye, and retired to my home.

Q. And after that Sunday morning did you return to see Emilio Valdez?

A. I retired after 3 o'clock.

Q. But did you return to see Emilio Valdez after that Sunday morning?

A. Not then, because I had gone directly to the sowing on that occasion.

Q. And did you return to the town that Sunday?

A. Yes, sir.

Q. Where did you go?

A. To his house.

Q. Whose house?

A. Of Emilio Valdez.

Q. What did you do there?

A. Asking for the money.

Q. Did you see Emilio Valdez there in his house?

A. I did not find him there then.

Q. But you saw him afterwards?

A. Yes, sir, after 5 o'clock.

Q. How did you come to see him?

A. I was taking a walk.

Q. Who was the companion of Emilio Valdez when you were taking a walk?

A. A cchero.

Q. And after taking a walk did you return to see Emilio Valdez?

49 A. Yes, sir; at dusk.

Q. Where did you see him?

A. In front of his porch.

Q. Was he alone or accompanied by someone?

A. He was accompanied.

Q. Who was his companion?

A. Juan Gatmaitan.

Q. What did Emilio Valdez do on going to his house?

A. He went up into his house.

Q. And what did he do?

A. He went inside his house, and I do not know what he did.

Q. You saw him leave?

A. Yes, sir.

Q. Was he carrying anything when you saw him leave?

A. Yes, sir.

Q. What was he carrying?

A. A gun.

Q. What did he do with the gun?

A. He delivered it to Juan Gatmaitan the other side of the enclosure.

Q. And what did Juan Gatmaitan do with the gun?

A. He took it away.

Q. Where did Juan Gatmaitan go?

A. He was directed in the direction of the back of the church.

Q. With whom did Juan Gatmaitan go?

A. One behind the other.

Q. Did Emilio Valdez say anything to you that night?

A. Yes, sir.

Q. What did Emilio say?

50 A. He told me to pass in front of the presidencia and see if there was a patrol there, and later to give him an account of what I saw.

Q. And what did you do?

A. I then passed there in front of the presidencia.

Q. And did you return to meet Emilio Valdez and Juan Gatmaitan?

A. I saw them at the corner between the house of Captain Marciano and that of Eusebio, and they were talking with someone.

Q. Do you know who the person was with whom they were talking?

A. I do not know him.

Q. And after talking with that person, do you know what Emilio Valdez and Juan Gatmaitan did?

A. I do not know?

Q. Did you return to see them after that moment?

A. As I was awaiting them at the place where they had been talking after little time had passed I did not see them.

Q. Did you hear anything that night?

A. Yes, sir.

Q. What did you hear?

A. When then I did not see them I went to the place to see what they had done, and I heard the noise of a carromata.

Q. Afterwards what did you hear beside the noise of the carromata?

A. After the noise of the carromata I heard the voice of a woman, but did not comprehend what she said.

Q. From where did the voice of the woman come?

51 A. From the house.

Q. Whose house?

A. House of Eusebio Yuson.

Q. And after that did anything occur there?

A. And after that there was an explosion, once.

Q. And what did you do on hearing the explosion?

A. I commenced to run.

Q. Do you know who fired the shot?

A. I am sure it was Emilio Valdez and Juan Gatmaitan.

Mr. Chicote:

I move that the answer of the witness be stricken from the record.

Fiscal:

We ask the defense to present the written letter.

The Court: (to the fiscal).

Present a written motion saying who has that letter and asking for its presentation.

Fiscal (to the witness):

Q. You said that Francisco Amante was carrying a shotgun. What kind of a shotgun was it?

A. A double-barrel gun.

Q. Showing you this gun tell me if the shotgun you saw Francisco Amante carrying was this kind of a gun or not?

A. Yes, sir; it seemed the same; this is the same shotgun.

Q. How do you know that is his same shotgun?

A. Because I am a tenant of theirs, and he frequently carried this shotgun.

Q. You said that Emilio Valdez delivered a shotgun to Francisco Amante. What kind of a shotgun was it?

A. Double-barrel gun.

Q. It appeared the same as this shotgun?

52 A. Of that form; a double-barrel gun.

Fiscal: I shall reserve the presentation of the written motion, your honor.

Fiscal (to the witness):

Q. Do you know what relations exist between Francisco Amante and Emilio Valdez?

A. Yes, sir.

Q. What are they?

A. They are brothers-in-law.

Q. Do you know if Francisco Amante has any business given to him by the family of Emilio Vandez?

A. As agent.

Fiscal: That is all.

Mr. Chicote (recross-examination):

Q. Do you know if you have ever been accused of the death of Eusebio Yuson?

A. Yes, sir.

Q. Is it true that you, before the justice of the peace of Gapán, declared you were guilty of the death of Eusebio Yuson?

A. In the declaration before the captain we declared ourselves guilty.

Q. Before the justice of the peace of Gapán was there not read to you an accusation or a complaint, and were you not asked if you were guilty, and you answered yes, you were guilty?

A. Yes, sir.

Q. And then you were detained? Is it not so?

A. Yes, sir.

Q. From then until this moment have you been at liberty or have you been detained?

53 A. I am at liberty.

Q. Is it not true that they detained you in the cuartel of the Constabulary?

A. Yes, sir.

Q. And from that time before the justice of the peace until now, is it not so?

A. Yes, sir.

Q. You were brought here between the bayonets of the Constabulary soldiers, is it not true?

A. Yes, sir.

Q. Since when are you a tenant of Emilio Valdez?

A. It is now a year, since his harvest of sugar-cane.

Q. Before that did Emilio Valdez know you?

A. Yes, sir, he knew me previously.

Q. Was there any friendship between you or business of any kind before you became a tenant of his?

A. We had no relations.

Q. After being a tenant of his, did you visit Emilio Valdez's house frequently? Did you go there as a visitor and talk together somewhat friendly and frequently?

A. On Sundays when I would go to mass I was accustomed to talk to him.

Q. Every Sunday?

A. Sometimes.

Q. When did you see Victor Robaya, the day of the death of the child to which you have referred or the day of the burial?

A. The day of the burial.

Q. Was the day of the burial the same day as the day of the death, or did the burial occur on another day?

A. The day of the death was different from the day of the burial.

Q. Do you know when the death occurred?

54 A. Friday night.

Q. Were you in the house when the child died?

A. No, sir.

Q. At what hour was the funeral?

A. After the siesta.

Q. At what hour would that be, at noon of the day or at 1 o'clock?

A. When the funeral arrived at the town it was after 4 o'clock.

Q. You were accompanying the body then?

A. No, sir.

Q. Where were you?

A. I was in the cemetery.

Q. When did you leave for the cemetery, before the body left the house or afterwards?

A. Before the departure of the body from the house, because I went to dig the grave.

Q. And is it not true that you were working there until the sun set?

A. No, sir.

Q. How long were you there working?

A. When they put the body in the grave it was 4:30, I think.

Q. After having made the grave, you helped to inter the child, is it not true?

A. Yes, sir, I am the one who filled in the grave.

Q. After doing that you were then quite a little while talking in the cemetery with the people who were there, were you not?

A. Yes, sir, when the funeral arrived there, the procession.

55 Q. Afterwards you returned to the house of the deceased, did you not?

A. Yes, sir.

Q. And then was when you met Victor Robaya?

A. I met him near the foot of the bridge which is there.

Q. And you and Victor Robaya went together to the house of the deceased, did you not?

A. Yes, sir.

Q. Were you two there very long?

A. A moment.

Q. Is it not true that you and he took supper there?

A. Yes, sir.

Q. Then it was not a moment, but a long time?

A. After supper he went away.

Q. Is it not true that you and he took supper there about 8 p. m.?

Q. I cannot determine if it was 8 p. m.

Q. Do you think it was 8:30 or 9 p. m.?

A. According to my calculation it was not yet 8 o'clock.

Q. But it was near 8 o'clock?

Q. I think so.

Q. At what hour did you leave the house of the deceased?

A. Not very long after Robaya had gone.

Q. Ten minutes afterwards?

A. No, sir.

Q. Victor Robaya went in the direction of the camarín of Emilio Valdez, did he not?

A. Yes, sir, Victor Robaya went in that direction.

Q. And you on leaving the house of the deceased also went in the direction of the camarín of Emilio Valdez?

56 A. Yes, sir, also, because it was the road.

Q. What is the distance from the house of the deceased to the camarín?

A. I think it must be more than 40 yards.

Q. How much time would it take to arrive there on foot, at an ordinary walk, from the house of the deceased to the camarín, would it be half an hour, a quarter of an hour, or how much time?

A. A moment, no more, because it is near.

Q. The land is clear there is it not, from the house to the camarín you can see everything?

A. Yes, sir, there is bamboo.

Q. But one can see the length of the road from the house of the deceased to the camarín?

A. Yes, sir.

Q. When you were going in the direction of the camarín, is it not true that you saw Victor Robaya who was also going toward the same camarín?

A. I did not then see him at the camarín, but when I arrived there I met Francisco Amante who was leaving.

Q. When Francisco Amante was leaving, was he alone or accompanied by someone?

A. He was alone.

Q. Why did you go to the camarín?

A. I was retiring to my house.

Q. And did you necessarily have to pass the camarín before arriving at your house?

A. Yes, sir; I always passed that way.

Q. What was Francisco Amante carrying when you saw him come out of the camarín?

A. He was carrying his shotgun, and he had it in his right hand.

Q. Outside of the camarín was there anyone?

57 A. No one.

Q. No one, absolutely no one?

Q. There was a carromata there.

Q. What carromata Francisco Amante's carromata?

A. His carromata, yes, sir.

Q. Francisco Amante's own carromata?

A. I cannot say if it is his own, but the driver is a small boy who is their boy.

Q. It is the carromata that he ordinarily uses, is it not?

A. Yes, sir.

Q. And then was when Francisco Amante said to you that you might go with him in the carromata?

A. Yes, sir.

Q. And what did you then say to Francisco Amante?

A. I told him that for my part I did not remember anything respecting the fact of his having sent the shotgun to the town.

Q. What shotgun is it that Francisco Amante had sent to the town?

A. A double-barrel gun.

Q. When was it sent?

A. March 16th.

Q. And your meeting with him when was that?

A. Saturday night.

Q. What date?

A. The 16th.

Q. What month?

A. March.

Q. And when had he sent the shotgun to the town?

A. That same night.

58 Q. To whom did he send the shotgun; what carried the shotgun to town?

A. He himself; I went with him in the carromato.

Q. Is it not true that he said to you that you accompany him to carry the shotgun to the town?

A. He told me that I would accompany him to deliver the shotgun.

Q. Have you seen on any other occasion this shotgun in the hands of Francisco Amante, or only that time?

A. I saw that shotgun the Sunday when Emilio Valdez made the delivery to Juan Gatnaitan.

Q. But what I want to know is if you have seen at other times this shotgun in the hands of Francisco Amante.

A. Yes, sir, we would always see that shotgun in the hands of Francisco Amante.

Q. And when you saw Francisco Amante with the shotgun, he was with other persons or was he alone?

A. He was not accompanied by any one, he was accustomed to carry the gun alone.

Q. Is it not true that that night when you climbed into the carromata, or when he invited you to enter the carromata, he invited you with these words: "Accompany me, because I am afraid to carry this shotgun to the town?"

A. He did not tell me that, only that I accompany him to carry the gun.

Q. And did you say nothing to him?

A. No, sir, he only told me not to tell anybody that we carried the shotgun.

Q. And did you have to go to the town for anything?

A. I did not propose going to the town that night, but it was he only that begged me to accompany him to take the shotgun.

59 Q. So that night you did not retire to your home?

A. I returned.

Q. At what hour?

A. I think I arrived at my house at 8 or 9 o'clock.

Q. Is it not true that from the town to your house it is a distance of almost two hours on foot?

A. Because I am accustomed to walk, I do not think one can arrive in two hours.

Q. But approximately, is that the distance, a distance of two hours and no more?

A. According to my calculation, if I start to walk it I think I could arrive in one hour, as when I go to mass I leave my house very early and arrive at mass in the town.

Q. When you and Francisco Amante arrived at the house in the town, he went up into the house, and you remained in the carromata?

A. Yes, sir, he left me in the carromata.

Q. You were there in the carromata awaiting him a long time, were you not?

A. Not so long a time.

Q. But long enough that you were weary or tired of waiting, were you not?

(al momento en que el subió).

A. Yes sir, the moment in which he went up, as he had already disappeared, I also went away.

Q. You did not say anything to Francisco Amante or he to you before both of you left?

A. Nothing, he only left me in the carromata and went up into the house.

Q. Besides that time how many times have you seen Francisco Amante carry the shotgun to the town?

A. Only on that Saturday when I saw him taking the gun to the town.

60 Q. Where were you on the 12th day of March?

A. I did not leave my house.

Q. Were you all the day of the 12th in your house without leaving?

A. I did not leave my house.

Q. And the day of the 13th?

A. I was looking for sugarcane seed on those days.

Q. Where were you on the day of the 20th of March?

A. I was there in the barrio of Santa Cruz?

Q. Did you not go any place?

A. No, sir.

Q. What day was the 20th of March?

A. I cannot say what day was the 20th of March?

Q. And the 13th of March, what day was that?

A. Neither can I say, because not (?) much time has passed.

Q. And the 14th, what day was that?

A. Neither can I say.

Q. And the 15th of March, what day of the week was it?

A. I am only aware that the child died on the 15th of March.

Q. But what day of the week was it?

A. Friday.

Q. And the 16th, what day was it?

A. Saturday.

Q. And the 19th?

A. I do not remember what those days were.

Q. When you came to the town, in whose house did you stop?

61 A. In Emilio Vandez's house.

Q. And when you went to the barrio of Santa Cruz, beyond your house, where were you accustomed to stop and to eat?

A. Due to the fact that it was the sugarcane seeding period, if it were not Sunday, I was accustomed to be at the mill.

Q. Do you know Emilia Francisco?

A. Yes, sir.

Q. How do you come to know that woman?

A. Because I live in her house.

Q. You said that on the Sunday you talked with Emilio Valdez in the town, did you not?

A. Yes, sir.

Q. Where did that conversation take place? In his house, in the street, or where?

A. In the hall or first floor of his house.

Q. At what hour?

A. According to my calculation, it was after 8 o'clock, because already the mass was over.

Q. Who was there besides you and Emilio Valdez?

A. I did not see there any other persons except us two.

Q. Is it not true that when you went there Juan Gatmaitan was there also?

A. When I arrived there that Sunday morning I did not see Juan Gatmaitan.

Q. And you say that Emilio Valdez offered you P1,000.00?

A. Yes, sir, he offered me then on that occasion when he called me into the entresuelo, and asked me if I wished some good business.

62 Q. And in the entresuelo, who was there besides you and he?

A. I did not see anybody except ourselves.

Q. At what hour did you leave the house of Emilio Valdez?

A. After that conversation a little after eight, then I left.

Q. From there you went to your house in the barrio, is it not true?

A. Yes, sir.

Q. Did you have to return to the town for any necessity?

A. I returned to the town for a necessity.

Q. What necessity was that?

A. Because I had P3.00 in his possession as a share that corresponded to the remainder of my share for the milling.

Q. Is it not true that you went there in the morning solely to talk with him about that money?

A. No, sir.

Q. Did you not know in the morning that you had that money in his possession?

A. I do not remember; I only remembered when some of my companions collected from him.

Q. At what hour did you arrive at the house of Emilio Valdez on that occasion?

A. I think it was a little after 3.

Q. Was Emilio Valdez there then?

A. I did not see him there.

Q. Who were there?

A. The male servants; an old woman.

Q. Did you talk with the old woman or with any one of the male servants?

A. I asked them where he was, and they replied that he had gone for a walk.

63 Q. With which one of them did you talk?

A. With that old bent-over woman.

Q. What is the name of that old woman?

A. I do not know her name.

Q. So that on that afternoon you did not see Emilio Valdez?

A. I saw him there about the time of the evening prayers in the company of Juan Gatmaitan.

Q. How did you know it was about the time of the evening prayers?

A. Because the bells were ringing.

Q. Then it was not near the time of the evening prayers, but at the time of the evening prayers?

A. I cannot say that because the bells were ringing, and by that it is to say that it was the time of the evening prayers.

Q. And is it not true that when Emilio Valdez returned, he returned in his carromata with his driver?

A. As it was dark, I cannot determine with whom he was, if with his driver or with some one else.

Q. Juan Gatmaitan was with Emilio Valdez in the carromata?

A. Yes, sir, he was in the carromata.

Q. You saw both of them descend from the carromata?

A. Yes, sir. I saw them descend from the carromata.

Q. Afterwards you saw both of them go up into the house?

A. Gatmaitan did not go up into the house.

Q. Did Emilio Valdez go up?

A. Yes, sir, Emilio Valdez only went up.

Q. Is it not true that before going up, Emilio asked you: "What do you wish? What are you doing here"?

A. He asked me then, "Are you here," and I answered him "Yes."

Q. And what more did he say to you?

64 A. He told me that as I had to return to my house that I pass in front of the presidencia in order to see if there was a police patrol there.

Q. And what did you say to Emilio Valdez?

A. I told him yes, and departed.

Q. And you then set out with the idea of retiring to your home, is it not true?

A. Yes, sir, my idea was to retire directly to my house.

Q. So that when you set out in the direction of the municipality you left in the house Gatmaitan and Emilio, is it not true; and they also left after Emilio delivered the shotgun?

Fiscal: I object, because the witness did not say that.

The Court: You may reply.

A. They departed before I did, but they intended to leave.

Chicote (continuing):

Q. Cuando Francisco Amante took the shotgun to the house, how could you see it? Was it not carried concealed?

A. No, sir; he had it on one side of the carromata.

Q. The same as that shotgun is here now? (indicating the shotgun which is leaning against the railing of the court-room).

A. Yes, sir, and on its side as it is now.

Q. But was the shotgun as it now is?

A. Yes, sir.

Q. The shotgun was not carried in any case?

A. No, sir.

The Court: The session is now closed, to be continued this afternoon.

Afternoon Session.

This case has been called for a continuation of the hearing on the afternoon of this day, July 9, 1912, before the Hon. Ysidoro Paredes, Judge, there being personally present: Messrs. L. M. Southworth and Carlos Ledesma, attorneys, in representation of the accused, Francisco Amante; attorneys Alfredo Chicote and Vicente Miranda representing the accused, Emilio Valdez; assistant attorney Antonio Villa Real, representing the United States; attorney Felipe Buencamino, Jr., as private prosecutor, and attorney Pedro Carmen, attorney de oficio for the defense.

MATEO ARCILLA continuing testifying under the same oath.

(A. Gempezao, interpreter.)

Chicote (continuing):

Q. You stated in your direct-examination, replying, to the Fiscal, that you saw Emilio Valdez deliver the shotgun to Juan Gatmaitan who was on the other side of the fence of the house of Emilio Valdez, is it not true?

A. Yes, sir.

Q. Where were you then?

A. I was in his house.

Q. In what part of the house?

A. Near the porch of the kitchen, where the tenants seat themselves.

Q. Upstairs in the house?

A. Yes, sir.

Q. So that the shotgun was delivered to Gatmaitan, Emilio Valdez being upstairs in the house?

A. He delivered the shotgun to Gatmaitan, and when the latter left Emilio Valdez followed him.

Q. What I wish to know is if Emilio Valdez delivered the shotgun from upstairs to the other who was downstairs.

66 A. Both were downstairs.

Q. Each one of them at a different place by the fence?

A. Yes, sir.

Q. So that the shotgun was delivered over the fence?

A. Yes, sir.

Q. What persons were in the kitchen at the place where you were when that occurred?

A. No one was there except a female servant and the old woman who entered and went out.

Q. What are the names of those persons? Do you know?

A. I do not know the names of those servants.

Q. Is it not true that the shotgun was delivered to Juan Gatmaitan in the entresuelo of the house of Emilio Valdez?

A. I did not see who made the delivery there.

Q. So that Juan Gatmaitan was outside the house of Emilio Valdez when he received the shotgun?

A. Yes, sir, he was outside of the house in the street.

Q. Do you mean to say that immediately after the delivery of the shotgun to Juan Gatmaitan, Emilio followed to the street with Juan Gatmaitan?

A. Yes, sir, he followed behind Gatmaitan.

Q. At what hour did that occur?

A. Evening prayers had already occurred.

Q. How much time took place during the evening prayers?

A. I think between 6 and 7 o'clock.

Q. And you arrived at the house of Emilio about 3 p. m., did you not?

A. Yes, sir, I arrived at the house of Emilio about 3 p. m.

Q. And you went up into the house and waited for Emilio, and seated yourself there in the kitchen where you ordinarily seat yourself, is it not true?

A. I waited there for him, and an old woman of the house
67 told me he was not there.

Q. That conversation between you and the old woman occurred in the kitchen, did it not?

A. Yes, sir.

Q. And there you remained until you saw Emilio Valdez deliver the shotgun to Gatmaitan,—handing it to him from below?

Fiscal: I object to the question, as the witness did not say that.

Q. (Chicote continued): And there you remained until Emilio delivered to Juan Gatmaitan the shotgun?

A. I saw him deliver it.

Q. But when you saw the delivery you were at the same place where you were seated from the beginning, or in the kitchen of the house?

A. Yes, sir.

Q. In what part of the kitchen were you seated?

A. I was seated in a place where one could peep out in the direction of the back porch.

Q. But within the kitchen?

A. I was within peeping from the window.

Q. Were you not then seated, but peeping from the window?

A. Yes, sir.

Q. And from the window where you were could you see the fence below?

A. Si señor (yes sir), one could see it.

Q. Tell how many times you went up into the house and left the house of Emilio Valdez on that afternoon that you saw the shotgun delivered.

A. I did not leave.

Q. So that you entered, arrived in the kitchen and peeped from the window, did you not?

68 A. Yes, sir.

Q. And there you remained until you saw the delivery of the shotgun, did you not?

A. Yes, sir, I was then at the window seeing the delivery of the shotgun.

Q. But were you there all this time until the delivery of the shotgun?

A. I departed.

Q. Where did you go?

A. In front of the municipal building in that street.

Q. You saw the shotgun delivered after you went to the municipal building or before?

A. After the delivery of the shotgun was made is when I went in front of the municipal building.

Q. Then you were peeping from the window from the time you arrived until they delivered the shotgun, and after that you departed?

A. Yes, sir; and I was charged that if I had to return to my house that I pass in front of the presidencia to see if there was a guard there.

Q. When you saw the delivery of the shotgun to Juan Gatmaitan, said shotgun was as you saw the shotgun here this morning, or did it have some other thing with it that it did not have this morning?

Q. I can not determine because it was then dark when the delivery of the shotgun was made.

Q. But what color did you see, negro, (black), white, red, or what color did you see?

A. Dark.

Q. And how did you know it was a shotgun?

A. Because it was large.

Q. Nothing more than by that?

A. Yes, sir, because one could distinguish the form of a
69 shotgun.

Q. Tell if the shotgun was delivered with a case or without a cover to Juan Gatmaitan?

A. I cannot determine if it had a cover, because it was already dark.

Q. Did you see also delivered that roll of cartridges that was here this morning?

A. I did not see that.

Q. After you saw the delivery of the shotgun you retired from the window, did you not?

A. Yes, sir, I retired from the window; and they told me if I had to return to my house that I pass in front of the municipal building.

Q. Then when you departed Gatmaitan and Valdez were still there?

A. They had already gone.

Q. And they gave you that task when they were leaving?

A. No, sir; when Emilio went up he said to me "you are here," and I said to him "yes."

Q. Where did that conversation occur, in the kitchen of the house?

A. Yes, sir, in the kitchen.

Q. So that you knew that Emilio arrived when you saw him in the kitchen?

A. Yes, sir.

Q. Is it not true that Emilio entered the room that is behind the stairway and from there brought forth the shotgun?

A. I was without, and do not know if he had entered the room; I already saw him with the gun.

70 Q. And you saw that he, upon entering, went from the interior gallery to the back porch, and from there downstairs?

A. Yes sir.

Q. Emilio Valdez at that moment passed very near to you, with the shotgun?

A. Yes, sir, he passed near to me with the shotgun, giving me the task that if I had to return to my house that I pass in front of the presidencia to see if a guard was there, and that I inform him accordingly later there at the angle of the corner of the house of captain Marcia and Eusebio Yuson.

Q. And then is when you clearly saw the shotgun?

A. Yes, sir, then was when I saw it.

Q. And then did it have a case over it or not?

A. I cannot say if it had a cover because it was already dark.

Q. So that you did not see clearly the shotgun?

A. I saw that he was carrying it.

Q. And you did not see if it was carried with a cover or without a cover, the shotgun?

A. I did not determine if it had a cover or not.

Q. You have stated that Emilio proposed to you the realization of the crime, and that you did not wish to accept it, did you not?

A. I did not accept.

Q. And you have also stated that you said to Emilio Valdez, "why are you going to kill such a person if he is a kind and forbearing person?"

A. Yes, sir, thus I said to him, "why should I kill Eusebio Yuson if he is a good person, especially to us poor people?"

Q. So that occurred on Sunday morning, did it not?

71 A. Yes, sir, when he told me that it was Sunday morning.

Q. You were resolved to take no part in the consummation of the act?

A. Yes, sir, so much so that I did not accept, because I was afraid.

Q. Now state what motive you had in accepting the task of watching the police and of carrying the message to them (Valdez and Gatmaiten) at the place where they must commit the act?

A. I accepted because it was nothing more than a message that I pass by there, and on account of the threat that if I should tell any one they would kill me.

Q. And is it not true that you then went to the house of Eusebio Yuson to tell him what they were going to do to him?

A. I went there, but I did not tell them anything because they were talking with a man, and I was afraid.

Q. With whom were they talking?

A. I can not say who he was; he was a man who wore a white shirt.

Q. You went to the house of Eusebio Yuson to inform him what was about to occur?

A. I did not go there.

Q. But in order for you to go to that place, to the corner between the house of captain Marciano and that of Eusebio Yuson, you had to pass in front of the house of Eusebio Yuson, did you not?

A. Yes, sir.

Q. And why did you not go to the house of Eusebio Yuson, inasmuch as he was a very kind man, to tell him what was going to occur?

72 A. I did not go there for the reason that I had heard the conversation of those people that if I should tell anybody they would kill me.

Q. Notwithstanding, you are now relating the act, are you not?

A. Yes, sir.

Q. And have you no fear that they will kill you?

A. I am afraid they will kill me.

Q. But notwithstanding that you tell it?

A. Yes, sir; I am telling all the truth.

Q. And before telling it here you also told it to the Constabulary, did you not?

A. Yes, sir, I made the statement before the Constabulary.

Q. And later you told it before the justice of the peace of Gapán, did you not?

A. Yes.

Q. And always in those cases you have been afraid to tell for fear of being killed for having so stated?

A. Yes, sir, I am afraid.

Q. When did you learn of the death of Eusebio Yuson?

A. March 17th.

Q. Who told you he had died?

A. I was so told, and besides I had seen that he was shot by Juan Gatmaitan.

Q. How many times did Juan Gatmaitan shoot Eusebio Yuson?

A. I only heard one shot.

Q. Did you not hear afterwards any other shot more than the one shot?

A. When I was distant I heard.

Q. What did you hear?

A. Discharges.

Q. How many?

73 A. I heard one, and due to the rapidity of my running I did not pay attention.

Q. How much time intervened between the one shot and the other shot? Was it a minute or less than a minute?

A. I cannot determine the minutes because I was already near the house of Don Rafael when I heard the other shot.

Q. That house of Don Rafael Lisañgan; is it the house that is alongside the house of Eusebio Yuson?

A. Yes, sir, it is between the two houses.

Q. You say that you saw Juan Gatmaitan discharge the shot. Explain to the court in what position Juan Gatmaitan was when he discharged the shot?

A. I did not see when the shot was fired; only when I was looking for them at the angle of the corner, but as I did not see them I went to the place to see in what location they were posted.

Q. And you saw in what place they were located?

A. They were at the angle of the corner at the side of a destroyed store.

Q. After seeing them there, you did not see them again?

A. Yes, sir; after threatening a man, saying if he told anything they would kill him, they disappeared, and that man went in the direction of the east.

Q. And you did not hear what that man said to them?

A. I did not hear what he said.

Q. From what distance were you from them?

A. Some 6 yards, more or less.

Q. Do you know Lucas Figueroa?

A. I know him.

Q. Was he the man that was there?

A. I have not determined because that night I did not know him as it was dark.

74 Q. But you heard well, clearly, what they said to him?

A. I heard what they said, that if he said anything they would kill him.

Q. Did you see Eusebio Yuson when you arrived at his house?

A. I did not see him, but I heard the noise of the carromata.

Q. When Eusebio Yuson arrived, had the man with the white shirt gone yet?

A. He was not there.

Q. How long a time had passed from the departure of that man until you heard the arrival of the carromata?

A. From the moment in which I saw them and until the moment that that man had gone is when the carromata came; almost immediately.

Q. When you were within the lot you said something there in a loud voice?

A. I did not say anything.

Q. When you were within the lot *de* Eusebio Yuson did you see those men?

A. No, sir.

Q. And you, being outside the lot, did you say anything or use your voice?

A. I did not make any outcries, sir.

Q. Do you know in what direction Juan Gatmaitan went after the shot?

A. After the firing I commenced to run, and then Juan Gatmaitan followed me.

Q. Is it not true that afterwards Juan Gatmaitan returned to the house of Emilio Valdez to return the shotgun?

A. I did not see that.

Q. You saw Juan Gatmaitan when he was behind you?

A. I saw him.

75 Q. Near or far?

A. Near; some 3 yards away.

Q. Did you and Juan Gatmaitan meet?

A. No, sir.

Q. In which direction did you go, and in which direction did he go?

A. I went in the direction of the seed-field, toward Santo Cristo; and he followed behind me; and I do not know in which direction he went afterwards because I ran faster than he.

Q. Is it not true that Juan Gatmaitan said to you that you should accompany him to return the shotgun to the house of Emilio Valdez?

A. No, sir.

Q. So that Juan Gatmaitan carried the shotgun when he left you?

Fiscal: I object to the question, because the witness has not said that Juan Gatmaitan carried the shotgun when he was running behind this accused.

The Court (to Mr. Chicote): You must first ask if he carried the shotgun.

Chicote (continued):

Q. State if Juan Gatmaitan carried the shotgun when he separated from you?

A. When he commenced to run I did not see that he carried anything.

Q. So that you saw him when he commenced to run?

A. Yes sir, because he ran behind me, at the same time that I arose by a fence, and he ran rapidly.

Q. State if this is the shotgun that you saw delivered by Emilio Valdez to Juan Gatmaitan. (Indicating the two barrel shotgun.)

76 A. As it was nighttime I cannot determine if it is the same.

Q. But it was of this form?

A. Yes, sir, it has that form the shotgun that I saw (delivered?) to Francisco Amante.

Q. The one that you saw delivered by Emilio Valdez to Juan Gatmaitan was of this same shape?

A. As I have well determined it has that same shape.

Q. So that you are certain of the shape of the shotgun?

A. I have not well determined, only that when he came alongside of me I noticed that it was a large shotgun.

Q. And while Emilio was talking to you and was giving you instructions what you must do, did you not also notice the shotgun?

A. When he told me that if I had to return that I should pass in front of the presidencia he did not yet carry the shotgun.

Q. Where did he tell you that, was it upstairs or downstairs in the house?

A. Upstairs.

Q. He told you that when he was going to the kitchen, did he not?

A. He came from the street when they arrived with Juan Gatmaitan; then is when he told me "you are here."

Q. And then was when he gave you the task to go immediately?

A. Yes, sir, I went then.

Q. And you left immediately on receiving the order, is it not true, in the direction of the presidencia?

A. I did not leave at once, but I watched first how he made delivery of the shotgun.

Q. So that you saw Emilio Valdez go downstairs? ?

A. Yes, sir, I saw him go downstairs.

77 Q. Did you see him carry the shotgun when Emilio Valdez went downstairs?

A. Yes, sir, I saw him carrying the shotgun.

Q. And when Emilio went downstairs with the shotgun, where were you?

A. I was in the kitchen.

Q. Looking from the window?

A. I was in the kitchen when he went downstairs carrying the shotgun.

Q. Were you then looking out of the window??

A. Yes, sir.

Q. And while thus peeping from the window did you see at one side below Emilio Valdez, and at the other side below did you see Gatmaitan, at the side of the fence?

A. Yes, on the other side of the fence.

Q. And did you see Emilio Valdez also go downstairs under the stairway?

A. Yes, sir, he went downstairs at the moment of making delivery of the shotgun.

Q. You have said that the shotgun delivered by Emilio Valdez to Juan Gatmaitan was a double-barrel shotgun. Are you sure of that?

A. I have seen a double-barrel shotgun, and it is the same that we carried when we retired from the town the other night, and they do not have other shotgun.

Q. So that you suppose that he delivered a double-barrel shotgun because there was no other double-barrel shotgun in the house?

A. Yes, sir.

Q. But you do not know if the shotgun that was delivered was a double-barrel or a single-barrel shotgun?

A. I cannot determine; I only saw a large shape, because it was dark.

78 Ledesma (recross-examination):

Q. You saw policemen when you were in front of the municipal building that night?

A. No, sir.

Q. How long were you standing in front of the municipal building?

A. I did not stop there; I only passed.

Q. When you left the house of Emilio Valdez and went in front of the municipal building it was because you had decided to comply with the instructions of Emilio, was it not?

A. I had no intention of complying with the instructions, but owing to the instructions that I must not say anything I went by that place, but I have said nothing to them.

Q. Why did you go to the municipal building? What object did you have in going there?

A. I did not go to the municipal building, but I only passed by there.

Q. You passed by there to say (see?) if there was a guard of the police, did you not?

A. Yes sir, his order was that if there was a police patrol there that I should inform them accordingly.

Q. Is it not true that you said that the order of Emilio Valdez was that you were to wait there to see if there were any policemen at that point, and from the moment you saw a policeman you were to so inform him? Is that not true?

A. I did not receive such an order, nor did I accept such an instruction, but if I should see a policeman I was to tell him of it.

Q. What I have asked you is if you went there to carry out that order of Emilio Valdez?

A. I did not remain there; I continued walking.

Q. When you left the house of Emilio Valdez and walked in the direction of the municipal building is it not true that you were meditating if you should stop there in front of the municipal building to see if there were any policemen there, in order to thus comply with the order of Emilio Valdez?

A. I did not comply with that order; I only passed by there.

Q. If you did not carry out that order why did you go from the municipal building to the place mentioned by Emilio Valdez?

A. Because I was accustomed to pass that way.

Q. You said that Emilio Valdez had instructed you to go to the municipal building and that if you there found any policemen you were to go to another place between the houses of Mariano and Yuson, and from there again to the place where they were. Is it not true?

A. No, sir, what I have said is this: that I should pass through the street in front of the municipal building and that if I should see a policeman on patrol there I should so inform him.

Q. And he instructed you to meet him at the place between the house of Marciano Adorable and that of lieutenant Yuson, did he not?

A. Well, they told me that I had to be there, and I went, and I saw that they were there talking with a man, and I continued on my way.

Q. Well, that is what I ask- you; if in place of going to the municipal building you went there, why did you do so?

- 80 A. Because I always pass by there.
- Q. When you left the house of Emilio Valdez and passed the municipal building, where were you going?
- A. I was returning to my house.
- Q. Where do you live?
- A. In Santo Cristo.
- Q. In what part?
- A. In front of his mill.
- Q. In going to your house it is necessary to pass in front of the municipal building, and later by the place where Emilio Valdez instructed you to go. Can you swear to that here without fear that you are lying if we should attempt to prove it now?
- A. Yes, sir, I can affirm it.
- Q. When you saw Emilio Valdez delivering the shotgun to Juan Gatmaitan, you had strong suspicions that Gatmaitan was going to kill Yuson that night, did you not?
- A. I did not suspicion that he was going to kill Yuson that night.
- Q. When Emilio Valdez proposed to you on the morning of that night that he would pay you P1,000.00 if you would kill Yuson that night, what feeling did it produce in you on that occasion?
- A. That I could not accept the offer he was making me.
- Q. But you did not think immediately that Emilio Valdez is a detestable man or a wild beast? Did you not think that?
- A. It is not that.
- Q. Did you not think that you should relate the fact to someone, as you yourself did not dare to denounce him, and someone else would be able to do it?
- A. I did not think that on account of their threatening me that they would kill me if I said anything to anybody.
- 81 Q. You thought seriously of that threat of Emilio Valdez?
- A. I thought so because he can carry it out.
- Q. Is it not true that you declined to accept the proposition of Emilio Valdez because you thought the reward of P1,000.00 small?
- A. No, sir, even though it were small or large, I had no intention of accepting it.
- Q. On the morning of the day on which the act was committed, did you meet Juan Gatmaitan in any part of the town of Gapán?
- A. I did not see him the following day.
- Q. No, on the morning of the day on which the act was committed, did you meet Gatmaitan?
- A. I did not see him.
- Q. Do you know if Gatmaitan goes to the cockpit?
- A. I do not know if he goes to the cockpit.
- Q. Do you go to the cockpit?
- A. No, señor (no, sir.)
- Q. On the afternoon of that day, the day of the act, did you meet Gatmaitan in any part of the barrio of Gapán?
- A. I did not see him there because I am not accustomed to go to the town, but only when the child died.
- Q. After the firing you were at a place some 10 yards distant, were you not?

A. Some 3 yards distant.

Q. You did not talk with him at that moment?

A. No, señor (no, sir).

Q. Why did it not occur to you to ask him why a shot had been fired at Eusebio Yuson?

A. Due to fear I did not think of asking him, and because I then commenced to run.

82 Q. At what hour did you arrive at your house that night?

A. I think it was near or less than 9 o'clock.

Q. Who were in your house when you arrived there?

A. A friend of mine who lived in the house.

Q. Did you take supper in your house?

A. Yes, sir.

Q. And in that house when you arrived there were they discussing what had occurred in the town?

A. No, sir.

Q. But on that night, early in the evening, or at midnight, did there not arrive there news of what had occurred in the town?

A. I did not receive any news.

Q. How many houses are there in the barrio where you live?

A. When that act occurred, at the place where I was, near the railroad, there were not more than two houses.

Q. No, in the village (barrio) where you live, how many houses are there?

A. The village is on the highway, but my house is near the railroad, and there *there* are not more than two houses.

Q. Who were the persons that lived with you in that house that night?

A. A married couple, Emilia Francisco and Ylesio Domingo.

Q. On the following day was not this act discussed in the village where you live, that they had killed Eusebio Yuson?

A. As there were there many tenants of Eusebio Yuson, they gave out the news that he had died.

Q. So that there was general comment regarding the death of Eusebio Yuson, there where you were?

A. At the place where I was they did not discuss that.

Q. Not a single person spoke to you regarding the death of Eusebio Yuson.

A. No one.

83 Q. Since that occurred, what has been said to date?

A. No one spoke to me of that.

Q. Have you never commented on this act at the church doorway, nor at the cockpit, nor in any particular house, nor at any place?

A. Not even once; I have said nothing to any one.

Q. You are a friend of Juan Gatmaitan?

A. No, sir.

Q. And why do you say that Eusebio Yuson was a good man; are you indebted to him for many favors?

A. I have said that Eusebio Yuson is a good man because when

he went to the seed-field he would always stop near us, and, although we are poor people, he would speak to us.

Q. But you have not received money from Eusebio Yuson on any occasion?

A. No, sir, I have received no money from him, never.

Q. And those P3.00 that Emilio Valdez owed you, did you go to demand it on the night on which you met him in the kitchen of his house?

A. I was not able to ask him for it because I was in a hurry.

Q. But when he was talking to you he had the shotgun in his hand, did he not?

A. No, sir, when he went up with Juan Gatamaitan is when I saw him, and when he left is when he carried the shotgun.

Chicote:

Q. You say you went to the place where Emilio Valdez was after you went to the presidencia. Now state if it was necessary to go that way, or if to arrive there one would have to pass through the lot of the house of Eusebio Yuson?

A. I was not accustomed to go by there, but I did it on that occasion solely on account of the order they gave me, but as
84 I saw that they were talking with a man I went away from them.

Q. Nothing more.

Fiscal:

Q. On the Sunday that you went to the house of Emilio Valdez, at what hour in the afternoon did you leave your house?

A. After the siesta hour.

Q. At what hour did you arrive at the house of Valdez, approximately?

A. According to my calculation, it was approximately 3 p. m.

The Court:

Q. In what municipality or province is situated the house of Emilio Valdez to which you have referred many times?

A. In Gapán, province of Nueva Écija.

Q. And the house of Eusebio Yuson?

A. Also in Gapán.

Q. And your house?

A. In Sto. Cristo, municipality of Gapán.

Q. And where is situated the sugar mill where Francisco Amante invited you to take the shotgun?

A. It is on the side of the street of the village of Sto. Cristo.

Q. And the houses of Valdez and Yuson are they within the town?

A. Yes, sir.

Q. And all the other occurrences you have declared, did they occur in Gapán, Nueva Écija?

A. Yes, sir.

Nothing more.

Statement of Lucas Figueroa.

LUCAS FIGUEROA, being first duly sworn, stated he is 36 years of age, married, is a laborer and a resident of Pambuan, municipality of Gapán, province of Nueva Écija, P. I. (interpreted by A. Gempezao).

Direct examination by the Fiscal:

Q. Do you know Emilio Valdez?

A. Yes, sir.

Q. Where is he?

A. He is there (indicating the accused, Emilio Valdez).

Q. When was the first time you knew him?

A. I know him because he is my townsman.

Q. Have you talked with him at any time?

A. I talked with him one Sunday afternoon when I was going to Gapán.

Q. Where did you talk with him?

A. In the highway behind the church that is in front of his house.

Q. What did Emilio Valdez say to you on that occasion?

A. He asked me if I was a tenant of Antonio Abad, head of the village, and I answered yes.

Q. What else?

A. After giving him that answer, he invited me inside his lot.

Q. And what did you and he do in his lot?

A. Once there he told me that he would give me some business, and I asked him what it was.

Q. Continue; what did he say to you?

A. He told me he would give me some business that would pay me P20.00.

Q. What was the business?

A. That he would pay me to watch lieutenant Eusebio Yuson, because they were enemies.

86 Q. What caused them to be enemies?

A. Over irrigated land.

Q. Did he say what irrigated land?

A. Irrigated land of the seed-field.

Q. And what answer did you make?

A. I replied that I did not wish to do so because I was afraid.

Q. Do you know Juan Gatmaitan?

A. Yes, sir.

Q. Did you see Juan Gatmaitan on that occasion?

A. I was going with him.

Q. After that occasion did you return to see Emilio Valdez?

A. I saw him one Sunday afternoon when I was going to the house of my principal.

Q. In what direction were you going?

A. In the street, and he was going toward the east.

Q. How was he going?

A. In carromata.

Q. What hour of the day was it, approximately?

A. In the afternoon.

Q. How was the sun?

A. Because when I arrived at the house of my principal I did not tarry much, and it was the hour of evening prayers.

Q. Did Emilio Valdez talk to you on that Sunday when you met him?

A. Yes, sir, he talked with me, and told me that if I did not accept what he had offered me that I should look out.

Q. And what else did he say to you?

A. He told me that he would await me at a place that is near the house of Eusebio Yuson, and that when I would hear the carromata that I should call him, and I told him yes.

87 Q. And what did you afterwards do?

A. I left the house of my principal, and as I heard the noise of the carromata I commenced to run and said the carromata is coming, and then Emilio Valdez entered and went out on all fours toward the lot of Eusebio Yuson; I then went toward the church, and while there I heard a shot.

Q. And did Emilio Valdez say anything to you after you had communicated to him the arrival of Eusebio Yuson?

A. He was threatening me that if I said anything to any one he would kill me.

Q. With whom was Emilio Valdez when you saw him that night?

A. With Juan Gatmaitan.

Q. Did you notice that Juan Gatmaitan was carrying anything?

A. He was carrying a double-barrel shotgun.

Q. Look at this shotgun that I am showing you, and state if the shotgun you saw that was being carried by Juan Gatmaitan appeared the same as this one. (showing the witness the shotgun.)

A. I could not say as it was dark, and I only saw that it was a double-barreled shotgun and that he carried it in his left hand.

Q. That is all.

Mr. Chicote (cross-examination):

Q. You have said that when Emilio Valdez proposed to pay you for the service, you refused to do that service, did you not?

A. I refused because it was a bad act.

Q. And why did you afterwards commit that same act?

A. Because I thought that they were not going to do it.

88 Q. You thought it was nothing more than a joke?

A. I thought it was a joke, but it resulted that it was the truth.

Q. The first time that you talked with Emilio Valdez was on that Sunday morning, was it not?

A. Sunday afternoon also.

Q. That was the first time in your life that you and Emilio Valdez had talked together?

A. Yes, sir, one Sunday afternoon, because I was not accustomed to go to the house of my principal except on Sunday afternoons.

Q. And the first thing that he said to you was that, asking you: "you are a tenant of Abad," and you said yes?

A. I answered "yes."

Q. Immediately he said to you, "I am going to pay you P20 if you will watch the house of Lieut. Eusebio with whom I am on bad terms on account of the irrigation"?

A. He told me that I should watch Lieut. Eusebio where he would go in order to tell him (Valdez) afterwards what Eusebio had done, but I told Valdez that I did not wish to do so because it would be bad.

Q. Regarding the bad terms between them on account of the irrigation, that is what you had heard said there, by the people, is it not true?

A. No, sir, he is the one who told me when he made me the offer and when I did not wish to accept the money.

Q. And do you know what the bad terms were which he mentioned to you?

A. He told me they were on bad terms over a question of the irrigation.

Q. Where did you talk with Emilio Valdez, in the street or in his house?

89 A. When he told me that I was in the enclosed yard.

Q. Where was Emilio then, in the carromata or on foot in the street?

A. He was passing in the street.

Q. In a carromata or on foot?

A. When he told me that he was going to pay me he was walking.

Q. At what hour of the afternoon was that?

A. It was very late; the sun had lost its heat.

Q. Do you say that when Emilio Valdez talked with you he was with Jaun Gatmaitan, is it not true?

A. He was with Jaun Gatmaitan when he offered to pay me, and I did not receive the money.

Q. So that when you met Emilio Valdez in the street he was with Juan Gatmaitan?

A. Yes, sir.

Q. And afterwards Emilio Valdez invited you to go up into the house, and the three of you did so? Is that not true?

Fiscal: The witness has not said that, your honor.

The Court: A captious question may be permitted in the cross-examination; consequently, the witness may answer.

A. I did not go up.

Chicote (continuing):

Q. Who went up, Emilio Valdez and Juan Gatmaitan, or which one of them?

A. I left them in their yard when they offered me the payment.

Q. So that you only entered the enclosed yard of Emilio Valdez?

A. They made me enter the doorway.

Q. In the hall of the house?

90 A. In the doorway that faces the street.

Q. How long a time were you talking with Emilio Valdez?

A. Only a moment.

Q. And during all the time you were talking with Emilio Valdez, Juan Gatmaiten was present?

A. Yes, sir.

Q. And Juan Gatmaiten heard all the conversation between you two?

A. We talked in a low voice.

Q. But he could hear what you two were saying?

A. I do not know if he heard, because when he offered me the payment we were some distance away.

Q. And Mateo Arcilla, was he also there?

A. I did not see Mateo Arcilla.

Q. At what hour did that occur?

A. What?

Q. About what you were talking.

A. In the afternoon.

Q. At what hour?

A. I do not know the hour, because I am ignorant.

Q. Where did you go from there after that, from that place, from the doorway (gateway) of the enclosed yard?

A. I went to the house of my principal.

Q. When you arrived at the house of your principal, was it yet the hour of evening prayers?

A. When I went up the stairway, yes, it was the hour of the evening prayers.

Q. What is the distance from the house of Emilio Valdez, where that conversation occurred, to the house of your principal?

A. The house of my principal is in front of the house of
91 Lieut. Eusebio Yuson, and that of Emilio Valdez is near the church.

(It may be noted that by agreement of the parties the distance from the house of the accused Emilio Valdez to that of the principal of this witness is from 4 to 5 meters, approximately.)

Q. When Emilio Valdez was talking to you about giving you the money, he delivered the money to you?

A. He was delivering the money to me, but I did not wish to accept it.

Q. What sum was he delivering to you?

A. As the bills were rolled up he told me that there was P20.

Q. You saw the bills rolled up together?

A. Yes, sir, they were rolled up like a cigarette.

Q. You could not know if there was one or if there were two bills, or of what denomination those bills were?

A. I do not know, because I could not tell about his money.

Q. When you informed Emilio Valdez that Eusebio Yuson's carromata was there, where was the carromata?

A. The carromata was yet distant, and it was a surmise of mine, in

telling Emilio that Yuson was coming, in order that I might escape; so much so that after saying that I commenced to run, and upon arriving in front of the church of the Methodists I heard a shot, and I afterwards supposed they had committed the act.

Q. How long did you tarry to say that to Emilio?

A. We only met at the corner toward the eastern part of the house of Lieut. Eusebio Yuson.

Q. But I wish to know if when you were talking with Emilio, "Now Lieut. Eusebio is here," you stopped or continued walking upon saying that?

A. I said to them, "What are you doing there; Lieut. Eusebio is coming."

92 Q. But you did not stop while you were saying that?

A. I stopped.

Q. How long did you stop?

A. I cannot say how long, due to my little knowledge.

Q. Do you think it might have been an hour?

A. No, sir.

Q. Half an hour?

A. I think it might not have been half an hour.

Q. A quarter of an hour?

A. I think that counting a quarter, only a quarter of an hour.

Q. While you were saying this to Emilio Valdez who was at that place?

A. When I said that to Emilio that Eusebio Yuson was coming he (Emilio) was with Juan Gatmaitan, and when I was some distance away I saw a man going in the direction of the seed-field, with a white shirt with red lines in it.

Q. At what distance did you see this man who was going in the direction of the seed-field?

A. On account of my not knowing how to calculate in yards and meters, it might have been a distance equal to one and one-half times the length of a carabao rope.

Q. How many fathoms, more or less?

A. Five or six fathoms, more or less.

Q. On that night the moon was sufficiently bright?

A. I think there was no moon because the night was dark.

Q. And how do you know that the shirt of that man had red lines in it?

A. I was only able to decide that he was wearing a shirt with red lines in it.

Q. The band of his hat was black, is it true?

A. I cannot say if the band of his hat was white or what color it was; only I decided he was wearing a white hat.

93 Q. What, if anything, did that man say to Emilio Valdez?

A. I do not know that he said anything, because I heard nothing; only Emilio Valdez told me to meet them at that place.

Q. You have stated you heard a shot?

A. When I was behind the church, near a white ant-hill, I heard a shot.

Q. Besides that shot did you hear any other shot?

A. I commenced to run, and upon arriving in front of the protestant chapel I heard another shot.

Q. And afterwards?

A. I am not certain, because as I was then very tired I walked very slowly like a rooster.

Q. What is the distance from the house of Eusebio Yuson to the white ant-hill? How many fathoms?

A. Not very far, because from the corner of the meeting place I had to pass 3 or 4 corners.

Q. Before your conversation with Emilio Valdez, had Juan Gatmaitan talked with you regarding the same affair?

A. Yes, sir, on one occasion on a Sunday when I came from the house of my principal I met Gatmaitan, and he told me that he had some good business, which was that Francisco Amante offered P1,000.00 (\$500.00) to anyone who would kill Eusebio Yuson, because they were on bad terms on account of irrigation.

Q. When was that?

A. I do not know what month it was, as I do not remember anything but the day that I was going to the house of my principal.

Q. How long a time was it after that day on which you saw Gatmaitan and talked with him and the time (or how many Sundays had passed) when you also saw Emilio Valdez?

94 A. One month, more or less, on the occasion when Emilio Valdez offered to pay me when he took me to the entrance of his house.

Mr. Southworth: I object to the witness' answer to a certain question asked by my colleague, Mr. Chicote, for the reason that that answer is not an answer in view of the question that was asked him, and for the further reason that it is hearsay evidence in regard to the accused Amante. The answer to which I object is that the witness had a conversation with Gatmaitan and that Gatmaitan had told him that Amante had offered him (Gatmaitan) P1,000.00 to kill Eusebio Yuson. I respectfully submit to the consideration of the court that that is hearsay evidence and is incompetent in regard to the accused Francisco Amante, on which account I ask that the same answer be stricken from the record.

Fiscal: I object to the question's being stricken from the record, in view of the fact that that answer has been drawn out by the defense itself from a witness for the prosecution. Further, it is a proper answer to the question of the defense, because the defense asked if previously to the occasion on which Emilio Valdez had conversation with the accused Amante, Juan Gatmaitan did not have another conversation with the witness, and this witness has answered affirmatively in regard to that conversation. Furthermore, if it be true that at the beginning the formalities have been disregarded, your honor will have observed that during the trial the counsel of Amante have taken good care to not ask such questions of the witness, such as Gatmaitan, who has scarcely mentioned the name of Francisco Amante. That is why if the attorneys for Emilio had been careful to prove anything
95 against Francisco Amante the answer of the witness should

not be considered hearsay evidence, because the answer was drawn out by the defense and not by the prosecution.

The Court: The answer of the witness regarding Gatmaitan, so far as it affects the defense of Francisco Amante, may be stricken from the record.

Chicote (continued):

Q. Lucas, did you see Mateo Arcilla the day of the death of Eusebio Yuson?

A. I did not see him.

Q. Neither before or after the act?

A. When I was in the Constabulary barracks in Cabanatuan I saw Mateo Arcilla.

Q. That was during last May, was it not?

A. I do not know if it was last May, because I know nothing regarding the months.

Q. But five Sundays have now passed since you saw him, have they not?

A. I saw Arcilla when I was in the Constabulary barracks in Cabanatuan.

Q. And how many Sundays have passed since then?

A. I do not know how many Sundays have passed since then, but I know that we met in Cabanatuan.

Q. And you have been together until the present time?

A. Yes, sir, we have been together, but unable to talk with each other because the Constabulary prohibits it.

Q. Before the day of the death of Eusebio Yuson were you informed by Gatmaitan or by Mateo Arcilla that they, Mateo Arcilla and Juan Gatmaitan, were going to kill Eusebio Yuson?

96 A. I do not know anything about that, only that Emilio told me they were on bad terms.

Q. The day of the occurrence of the death of Eusebio Yuson is it not true that you talked with Mateo Arcilla and with Juan Gatmaitan there in front of the house of Eusebio Yuson?

A. I did not see Mateo Arcilla; only Gatmaitan told me that he went out with Mateo Arcilla, but that is not true because I saw that Juan Gatmaitan going out accompanied by Emilio Valdez.

Q. Juan Gatmaitan told you that before the occurrence, did he not?

A. When I told them that Eusebio Yuson was coming Juan Gatmaitan told me to remain there, and he also told me that he was going with Mateo Arcilla, but I only saw that he went out with Emilio Valdez, so much so that he even entered the lot calling for me.

Q. From what direction did Emilio enter the lot, at what point?

A. From the west, from the direction of the destroyed store.

Q. Before the present time have you made any statement before any authority?

A. I have made a statement that I saw Juan Gatmaitan and Mateo Arcilla, but I did not see Mateo Arcilla but only Emilio Valdez.

Q. Was not the statement in which you made those declarations sworn to before the justice of the peace of Gapán?

A. Well, I did swear to that declaration before the justice of the peace according to what the captain said.

Q. But was it you or the captain that made the statement?

A. I went with a person who wrote down our statement.

Q. Who was it that did the writing?

97 A. I do not recall his face, because I was then hungry.

Q. Was not this the man? (indicating Mr. Buencamino).

A. It seems that he is the same man.

Q. Some days after you were before the justice of the peace to swear to that statement, did they not take you again before the same justice of the peace to make a statement under oath a second time?

A. I do not remember if we were taken there again, but I do know that when they conducted us there the captain went with us.

Q. How many times were you taken before the justice of the peace?

A. Twice.

Q. On both occasions they placed before you a paper and made you swear to it, did they not?

A. Yes, sir, they made me swear to what I know, to those statements that I made before the captain and the lieutenant of Constabulary.

Q. State if the paper which they presented to you and to which they made you swear is the same one that I now show you, this document attached to the information?

A. Owing to my ignorance I cannot say if it is the same; all I can remember is that they made me mark with my thumb the sworn statement before the captain and the lieutenant.

Q. Look at the mark on this document, and state if it is the mark to which you refer, placed there by you?

A. I think that is the mark I made on the statement before the captain and the lieutenant.

Q. Before you placed this mark on that document did they read to you the contents of said document?

A. I do not know if they read the statement to me, only that they told me to mark it, to sign it, but as I stated I did not know

98 how to write they made me mark it with my thumb.

Q. But you heard that of the justice of the peace, did you not?

A. I heard their reading a document, and according to my belief it was my declaration, on which account I marked the statement.

Q. I now show you another document attached to information No. 2079 which appears on page 5, and ask you if you have seen this document before now?

A. I have seen it because they were always obliging me to sign; as I could not do it they made me mark with my finger, and in doing so I believed it was the statement made by me before the captain or the lieutenant.

Chicote: I ask the court to order the translation of these two statements to the witness in order that he may state positively if the

statements that he made are or are not the statements that he has related substantially regarding the occurrence, as the other witness Juan Gatmaitan related it, with reference to the witness Arcilla.

(By order of the court interpreter Gempezao translated verbally to the witness, in his dialect, the documents in question.)

The Court (addressing the witness):

Q. Do you know that statement contained on page 4 of the record?

A. I know it, but in that document on that occasion I did not say anything about Emilio Valdez or refer to him, because I was afraid he would kill me, and on that account I did not wish to state
99 the whole truth, on account of that fear, due to my being a mere laborer.

Q. And that other document on page 5, do you know it?

A. Yes, sir, I know the document that appears as page 5 of the record.

Mr. Chicote: We offer these statements in evidence so far as they conflict or contradict the statement of this witness in this trial.

The Court: You may mark them and introduce them in their time as proof of the defense.

Mr. Southworth (cross-examination):

Q. You have stated that at the time of your leaving the house of Emilio Valdez on the afternoon of the occurrences you went to the house of your principal, did you not so state?

A. Yes, sir.

Q. Did you enter that house on that night?

A. I went there and asked the cousin, one Peca, if my principal was there, and she told me he was in Cabanatuan; I waited a little while to see if he would arrive, and as he did not come I left, and I heard the noise of a carromata, and then I told her that the carromata of Yuson was coming.

Q. You stated that you had a conversation with Emilio Valdez in his house on the afternoon of the day of the occurrences and that he offered to you P20.00, and that when you were present——

Fiscal: I object to the question, since the witness has not stated that on the afternoon of the day of the occurrences he had been in the house of Emilio Valdez, but that the conversation occurred elsewhere.

100 Mr. Southworth withdraws the question.

Q. Did Gatmaitan have his shotgun at the time of that conversation on that afternoon.

A. When they ordered me to wait.

Q. On that occasion when you said you had a conversation with Emilio Valdez at the entrance of his house?

A. He was with Juan Gatmaitan.

Q. And did he carry the shotgun?

A. When they paid me?

Q. Yes.

A. On the afternoon when Emilio Valdez was paying me I did not see that he was carrying a shotgun.

Q. On the afternoon that you and Emilio Valdez had a conversation in his house, was Juan Gatmaitan present? (Question withdrawn.)

Q. When you had the conversation with Emilio Valdez in his house on the afternoon of the day of the occurrences, was Juan Gatmaitan present then or not?

Fiscal: I object to the question because the witness did not have such a conversation, on the day of the occurrences, in the house of Emilio Valdez.

Mr. Southworth: We allege that under those occurrences that the witness had stated—but, very well, I withdraw the question.

Q. Had you any conversation with Emilio Valdez at the entrance of his house on the day of the occurrences?

A. No, sir; he only talked with me in the street.

Q. At what distance from the house?

A. I cannot remember.

Q. Approximately.

A. I remember having met him east of the church.

101 Q. Is that the side across the street in front of his house, that is to say, is it the side of the church farther from the house or is it the side nearer the house?

A. No; it is west from his house.

Q. That is not an answer to my question. Answer me if you and he met at the side of the church nearer or farther from his house, or on the other side farther from his house?

A. When he was going toward the east, or when he offered me the money?

A. I refer to the day or the afternoon of the day of the occurrences.

A. I refer to our meeting there behind the church toward the east.

Q. Could you see the house of Emilio Valdez from the place where you and he met?

A. No, sir.

Q. At what distance were you from the church when you met?

A. I cannot calculate the distance from the church when we met on the occasion on which he was in a carromata.

Q. Was he in the carromata when you and he met on the afternoon of the day of the occurrences?

A. He was traveling in a carromata.

Q. Was Gatmaitan with him then?

A. He was going toward the east, and he was not yet with him.

Q. Was he going in the direction of his house or was he going in a direction from his house?

A. No, in the direction of his house but toward the east; and according to what he said he was looking for Gatmaitan.

Q. And after that did you see him with Gatmaitan?

102 A. He told me he would wait at the angle of the street, and when I went there I met him already in the company of Gatmaitan.

Q. What time elapsed from the time when you met him behind the church until you all met at the corner?

A. Plenty of time; after the hour of evening prayers.

Q. That is all.

Statement of Victor Robaya.

The witness was duly sworn, and stated his name is VICTOR ROBAYA, 23 years of age, married, a laborer and a resident of the suburb of Santo Cristo, municipality of Gapán, province of Nueva Ecija, Philippine Islands. (A. Gempezao, interpreter.)

Direct examination by the Fiscal:

Q. Do you know Emilio Valdez?

A. Yes, sir.

Q. Where is he?

A. There he is (indicating the accused, Emilio Valdez.)

Q. Do you know Francisco Amante?

A. Yes, sir.

Q. Where is he?

A. He is also there (indicating the accused, Francisco Amante).

Q. What connection do you have with Emilio Valdez?

A. Tenant.

Q. Have you at any time received any order from Emilio Valdez?

A. Yes, sir, that letter.

Q. What letter was that?

A. I do not know what letter; I only received it from him to deliver it to Francisco Amante.

Q. What day was that? Do you remember?

103 A. Saturday?

Q. From where did you come?

A. I came from a funeral.

Q. Who gave you the letter?

A. Emilio Valdez.

Q. What did he say to you when he delivered the letter to you?

A. He told me to deliver that letter to Francisco Amante.

Q. While you had that letter did any person see it?

Mr. Chicote: I object to the question because it is completely immaterial.

The Court: But it is corroborative of preceding proofs; the witness may answer.

A. When he delivered the letter to me, no one saw it.

Fiscal (continued):

Q. After the delivery of the letter to you, did any one see it?

A. After I received the letter I left his house, and I went to the seed-field.

Q. And did any one see that letter on your way to the seed-field?

A. Yes, sir.

Q. Who?

A. Mateo.

Q. What Mateo?

A. Mateo Arcilla.

Q. How did Mateo Arcilla happen to see that letter?

A. Upon taking a cigarette from my pocket he could see it.

104 Q. And what did Mateo Arcilla do with that letter?

A. He read it.

Q. And after reading it what did he do with it?

A. He returned it to me.

Q. And what did you do with the letter after it was returned to you?

A. I put it again in my pocket.

Q. And what did you do afterwards with the letter?

A. I put it in my pocket, but I did not read it.

Q. Where did you deliver it?

A. In the warehouse of Emilio Valdez.

Q. Where?

A. In his warehouse in the seed-field.

Q. And whom did you meet in the warehouse.

A. Quico.

Q. What Quico?

A. Amante.

Q. And what did you do with the letter when you saw Amante?

A. After delivering the letter to him I departed.

Q. That is all.

Mr. Chicote (cross-examination):

Q. When Mateo Arcilla saw the letter, was it on Saturday or the day before Saturday?

A. It was Saturday afternoon when we went to the seed-field.

Q. In what direction did you and Mateo go?

A. To the seed-field.

Q. Did you and he go in direction of the warehouse?

A. Yes, sir.

Q. You and he were talking about the funeral at which both of you had assisted, had you not?

105 A. Yes, sir.

Q. And then in the road a short time before arriving at the warehouse you were looking for the cigarettes, and the letter fell to the ground, did it not?

A. I took it from my pocket and gave it to Quico.

Q. And Quico read that letter?

A. I do not know if he read it, but after delivering it to him I returned to my house.

Q. And then who delivered the letter to the warehouse, Mateo or you?

A. I delivered it to Quico.

Q. So that Quico then carried the letter to the warehouse, did he not, because his house is also near the warehouse?

(Question withdrawn.)

Q. At what distance did Arcilla remain when you went to deliver the letter?

Fiscal: I object to the question because Mateo Arcilla was never with the accused.

The Court: The witness may answer.

A. I think it might have been a distance equal to the length of a carabao rope.

Chicote (continued):

Q. State how many fathoms.

A. I cannot calculate in fathoms.

Q. Might it have been a distance equal to that from the place where you now are to this wall of the courtroom? (Indicating a distance of five steps.)

A. I think that from the place where I am to that wall, or more (indicating some 30 or 40 meters.)

106 Q. Then in what direction did Mateo Arcilla go?

A. When we had eaten in the house of the deceased I, after eating, left.

Q. And where did he go?

A. I do not know because I left him in that house.

Q. What you and he did was to take supper in the house, was it not?

A. Yes, sir.

Q. Then it must have been between 7 and 8 p. m.?

A. It was already close to midnight when we arrived there.

Q. Where?

A. In the house of the deceased.

Q. On what day?

A. Saturday.

Q. The following day was Sunday, was it not?

A. Yes, sir.

Q. How long were you in the house of the deceased after midnight?

A. After supper I left, in order to carry the carta (letter) to Francisco Amante.

Q. How many hours passed from the time you arrived about midnight there at the house until you left the house again?

A. I can not say the hour, because on our arriving there we ate, and afterwards we departed.

Q. Where did Emilio Valdez deliver the letter to you?

A. In the garret of the hall.

Q. State where it was, in what place.

A. On the first floor of the hall, or entrance.

Q. At what hour did Emilio Valdez deliver the letter to you?

A. In the afternoon.

Q. At what hour in the afternoon? Was it yet the hour of evening prayers?

107 A. It was after the hour of evening prayers (evening prayers are always at 6 p. m.).

Q. Saturday?

A. Yes, sir.

Q. Was there no one there when Emilio Valdez delivered the letter to you?

A. No, sir, no one.

Q. The letter was a piece of paper, doubled, nothing more, and was delivered to you, is it not true?

A. Yes, sir.

Q. It was not in a sealed envelope?

A. No, sir.

Q. And it was written in the Tagalog language, was it not?

A. I do not know because I did not read it.

Q. You are now detained by the Constabulary, are you not?

A. No, sir.

Q. When were you detained by the Constabulary, if you ever have been at any time?

A. I have not been detained by the Constabulary.

Q. Have you been in your house during those days of the past?

Q. Yes, sir.

Q. In your house in the suburb of Santo Cristo have you been during the last week?

A. During those days I was with Pecta.

Q. Who is that Pecta?

A. Pecta, mother of Vadong Balmonte.

Ledesma (cross-examination):

Q. How many times have you carried letters from Emilio Valdez to Francisco Amante?

A. That time only.

Q. How many times have you carried letters from any person to another person?

A. I have not carried any other letter except that one.

108 Q. Did not Emilio Valdez tell you when he delivered the letter to you that you must deliver it to Francisco Amante only?

A. Yes, only to Francisco Amante.

Q. Good, but you must know that you should not permit others to read letters entrusted to your care do you not?

A. Due to the fact that I took from my pocket a cigarette he could take that letter; he was enabled to take that letter from me.

Q. Mateo Arcilla picked up that letter of Emilio Valdez for Francisco Amante, or are you the one who picked up that letter from the ground?

A. I picked it up.

Q. Then he asked you to deliver to him the paper you were carrying, did he not?

A. Mateo Arcilla read the letter in the road.

Q. That is not what I asked you. You say that when the letter fell out of your pocket you picked it up from the ground, did you not?

A. What I have stated is that Mateo in taking the cigarette from my pocket caused the letter to fall to the ground, and he read it.

Q. And you did not object then?

A. I did not object because I thought he picked up the cigarette, but I afterwards saw that he had taken the letter; he read it, and afterwards returned it to my pocket.

Q. That occurred in the house of Arcilla, did it not?

A. In the street.

Q. Nothing more.

Fiscal:

Q. What was the position of the sun when Emilio Valdez delivered the letter to you?

Chicote: I object, because the witness has stated that the
109 hour of evening prayers was over; but I do not insist upon my objection.

A. I do not know the position of the sun, because I did not read the letter.

Fiscal:

Q. When Emilio Valdez delivered the letter to you was it already dark or was it yet light?

A. It was already dark.

Q. On receiving the letter from Emilio Valdez for Quico where did you go?

A. I started for the seed-field.

Q. What is the distance from the house of Emilio Valdez and the seed-field where you went?

A. It is considerable distance from the suburb of Santo Cristo.

Q. But how many cigarettes would you consume in going there? (question withdrawn.) Did you go directly from the house of Emilio Valdez to the seed-field that day?

A. Yes, sir.

Fiscal: That is all for this witness.

The Court: The session is terminated until to-morrow at 8 o'clock, sharp.

Court Session of July 10, 1912.

Having called again this case for a continuation of its hearing on the morning of this day, July 10, 1912, before the Hon. Ysidro Paredes, there were present the same parties.

Continuation of the Proofs of the Prosecution.

Statement of Tomas Diego.

110 TOMAS DIEGO, being duly sworn, stated his name to be Tomás Diego, 27 years of age, married, driver, a resident of the municipality of Gapán Nueva Écija Province, P. I. (A. Gempezao, interpreter.)

Direct examination.

Questions by Fiscal:

Q. Do you know Emilio Valdez?

A. Yes, sir; there he is (indicating the accused, Emilio Valdez.)

Q. Do you know anything regarding the death of Eusebio Yuson?

Ledesma: I object to the question, because it assumes the fact of the death. (Fiscal withdrew question.)

Q. Do you know the occurrence that took place in Gapán?

A. What occurrence?

Q. The occurrence in which a shot was fired?

A. What I know is that at the first shot the male servant cried out "a misfortune has occurred."

Q. Do you know when that was?

A. I do not remember the date, but it was one Sunday night.

Q. Did you see the accused, Emilio Valdez, that night?

A. I saw him before the shot.

Q. Where did you see him?

A. At the corner.

Q. What corner?

A. At the corner of the road near our house.

Q. Where is your house?

A. In front of the doctor's house.

Q. What is the name of that doctor?

A. Benedicto Adorable.

Q. What was the accused doing when you saw him?

A. The first time I saw him he was standing.

Q. And afterwards did you see him?

A. Yes, sir, talking with a man.

111 Q. And what was the man doing with whom he was talking?

A. I only saw them talking.

Q. What did they do afterwards?

A. They departed.

Q. In what direction did they go?

A. As I saw them, they went toward the west.

Q. Toward what house?

Q. Towards the stone house.

Q. Who is the owner of that stone house?

A. The deceased.

Q. What was the name of the deceased?

A. Eusebio Yuson.

Q. Did you hear a shot that night?

A. Yes, sir.

Q. Was the shot you heard before or after you saw Emilio Valdez?

A. When I saw Emilio Valdez the shot had not yet occurred.

Q. How long a time elapsed from the first time you saw Emilio Valdez until you heard the first shot?

A. The same time as that I have been seated here. (The witness had been seated approximately 5 or 6 minutes.)

Q. And what did you do after having heard the first shot?

A. After hearing the first shot I went toward the stone house because I heard voices there, but I was unable to enter in view of the fact I heard other shots.

Q. From what direction were the other shots fired that you heard?

A. Toward the west.

Q. Do you know approximately from where the second shot was fired? From what house?

A. According to hearsay, from the other house.

Chicote: We object to that, and ask that the answer be stricken from the record.

112 The Court: The answer is ordered stricken from the record.

Chicote (cross-examination):

Q. In what street is your house?

A. I do not know what that street is called.

Q. How long have you lived there?

A. Two years.

Q. Do you not know either the number of your house or the name of the street?

A. No, sir.

Q. What is the distance from your house to the church?

A. I think the distance is equal to that from the house of Mr. Carmen to this courtroom. (Some 400 meters according to the estimation of the parties.)

Q. What house is nearest the house of Eusebio Yuson, yours or that of Emilio Valdez?

A. We are both near that of Eusebio Yuson.

Q. What I wish to know is which house is nearest that of Eusebio Yuson, your house or that of Emilio Valdez?

A. My house is nearer that of Eusebio Yuson than is the house of Emilio Valdez.

Q. When you saw Emilio Valdez the first time, was he alone?

A. Alone.

Q. And he was on foot?

A. Yes, sir.

Q. How long was he on foot while you saw him?

A. I only tied my horse, went up into my house, and was seated in a chair, and upon looking out I saw it was already 2 o'clock.

Q. How long did that take, more or less?

A. You may estimate it, because I did nothing more than to tie my horse, go up into my house, seat myself in a chair and
113 upon looking out I saw that it was already 2 o'clock.

Q. Do you know who the other man was with whom Emilio Valdez was talking?

A. No, sir.

Q. Besides those two did other persons pass in the street?

A. I did not see anyone.

Q. How long were you in the window looking at the people passing in the street, might it have been an hour?

A. No, sir.

Q. Half an hour?

A. I think so, a half an hour more or less.

Q. During that half an hour that you were looking at what was occurring in the street did you not see anyone pass in the street, people that were passing?

A. I did not hear anything more than the shot, not having passed that half hour.

Q. But did you or did you not see people passing in the street?

A. I only saw them.

Q. Who were they, to whom do you refer?

A. Emilio.

Q. Who else?

A. And on the second occasion that I saw him he was accompanied.

Q. Accompanied by whom?

A. I cannot say who he was.

Q. Accompanied by several persons, or by one person only?

A. One person only, and I saw him standing.

Q. How long were Emilio Valdez and that other person talking while you could see them?

A. I saw them there only a moment, and then they had gone.

Q. How long was it from the time of their departure until
114 the sound of the shot?

A. Not very long.

Q. How long a time?

A. I cannot determine how long.

Q. What did you do during that time?

A. Nothing.

Q. Where were you?

A. In my house.

Q. Were you seated?

A. Yes, sir, seated.

Q. Were you near the window looking into the street?

A. Sometimes looking into the street, and at other times, no.

Q. Were you smoking?

A. Yes, sir, smoking.

Q. When did you light the cigarette, at the time of looking out or at the time of seating yourself, or before that time?

A. I was seated while smoking.

Q. Did you light that cigarette before you saw Emilio Valdez with the other person, or after you saw the two of them?

A. Already I had lighted it.

Q. Had you lighted it some moments before, is it not true?

A. I had lighted and was smoking the cigarette when I saw them.

Q. Is it not true that after tying the horse you went to the kitchen of the house to light the cigarette?

A. No.

Q. How did you light the cigarette?

A. With a match.

Q. When you saw Emilio Valdez the first time, where was he?

A. In the street.

Q. In the middle of the street?

115 Q. At the angle of the corner.

Q. At the corner where your house is, or that which forms your house?

A. No, sir, at the angle of the side of the corner opposite.

Q. Were you seated.

A. I was standing.

Q. The first time?

A. Yes, sir, the first time he was alone.

Q. Later, after you entered your house, tied the horse, went up into your house, seated yourself at the side of the window, after you lighted a cigarette, is when you saw for the second time Emilio Valdez accompanied by another man?

A. Such is not the case.

Q. What?

A. I placed the horse outside, tied it there, and entered our house.

Q. Then is when you seated yourself near the window?

A. Yes, sir.

Q. And lighted the cigarette?

A. I was already seated when I lighted the cigarette.

Q. Now, how much time passed between your lighting the cigarette until you saw Emilio Valdez the second time?

A. I cannot tell that.

Q. How many cigarettes had you consumed then?

A. I cannot tell.

Q. Did you see Emilio Valdez immediately after lighting the cigarette, or did some time pass?

A. After lighting the cigarette I looked out and saw him.

Q. Afterwards did you hear a shot?

A. A little time transpired.

116 Q. How long?

A. I cannot say how long a time.

Q. What cannot you state *long* long it was?

A. I do not rem-ber how long it was.

Q. Had you at that time lighted another cigarette?

A. No, sir.

Q. Had you yet finished smoking the first cigarette?

A. I do not rem-ber if I had finished the first cigarette or not.

Q. But, more or less, what time passed since the time of your lighting the cigarette until you heard the shot? Might it have been 5 minutes, 10 minutes, or how long?

A. I cannot now say because I do not remember, and I do not know the time.

Q. But did much time pass or a little time?

A. That is what I do not know if it was much time or a short time.

Q. Do you know how to say the Lord's Prayer?

A. No, sir.

Q. Do you know the alphabet, a, b, c, and d?

A. I do not know more than Jesus, Mary, and Joseph.

Q. State if from the time you saw Valdez until you heard the shot you had time enough to say three times, "Jesus, Mary, and Joseph"?

A. That I cannot say.

Q. State if from the time you saw Valdez could you have gone downstairs to catch your horse to take it inside the house; would you have had time to do that, to catch the horse, take it to the stable or compound of your house, until you heard the shot?

A. Well, I cannot say that.

Q. How long were you at the window, seated near the window?

A. I cannot say if much time passed or not, because I do not remember.

117 Q. You say you heard a shot; what did you immediately do after hearing that first shot?

A. Immediately after hearing the first shot I heard the male servant of the house saying, "a disaster has occurred to him; bring the light"; and immediately I departed, but as I heard another shot (interruption)——

Q. Now, repeat, how did you hear the first shot and how did you hear the voice; that is to say, how you heard it and what you heard.

A. After I heard the shot I heard also the voice saying "bring the light; a disaster has occurred to him."

Q. What I wish to see is the simultaneity that occurred between the shot and the voice; that is to say, repeat what you heard or what you saw then.

A. I heard the shot, and I heard the voice of the male servant who said "A disaster has occurred; bring a light."

Q. When you heard the shot were you seated?

A. I was seated.

Q. And when you heard the voice of the male servant asking for a light and saying that a disaster had occurred were you seated?

A. I arose then on hearing that, and afterwards I heard also

that some one had been killed; that they wished to say that Eusebio died.

Q. And then you went downstairs to render aid in direction of the house?

The Court:

He has answered that already two times, Mr. Chicote.

Chicote (continued):

Q. You say that you heard a second shot; how long a time was there between the first and the second shot?

118 A. You may calculate that, because I upon hearing the first shot and the statement of the male servant that Eusebio Yuson had died I commenced to run in the direction of the house, but before arriving there I heard another shot, and I returned to my house.

Q. How many steps are there between the house where you live and the house of Eusebio Yuson, or how many fathoms?

A. I have not counted them.

Q. But about how many?

A. Well, I cannot say.

Q. Do you know how long is a rope used in tying carabaos?

A. I do not know.

Q. Is your house as far from the house of Eusebio Yuson as is this place where you now are from the place where the school of this province is located, which is here at the side of this government building?

A. I think it is a little further (by agreement of the parties it is agreed that the distance shall be calculated to be about 80 meters).

Q. Besides that second shot did you afterwards hear other shots?

A. I did not take good notice of that.

Q. To whom did you for the first time state what you had seen or had heard on that night of the occurrence?

A. I have said nothing to anyone.

Q. This is the first time you have related it?

A. It is the first time I have told it to the authorities, because it is bad that I know the truth and do not tell it.

Q. But before this time have you related it to any other person?

A. I have told his wife that at the proper time she could count on me and that I would tell what I know.

119 The Court: Whose wife?

A. Wife of the deceased.

Chicote (continued):

Q. What relation are you to the deceased, Eusebio Yuson, or to his wife?

A. No, sir; neither of them is any relation to me.

Q. Are you not their tenant?

A. No, sir.

Q. Are you not their driver?

A. No, sir.

Q. Have you never been employed by Eusebio Yuson as driver?

A. No, sir.

Q. On the night of that occurrence were you in the house of Eusebio Yuson, or after the occurrence?

A. After we took the body of the deceased in the house I returned to my house.

Q. That is all.

Ledesma (cross-examination):

Q. What is your business?

A. Driver.

Q. How many horses have you, or how many do you look after?

A. One.

Q. Are you a driver of a vehicle for hire (public carromata) or of what?

A. A vehicle for hire.

Q. At what hour of the morning do you start out to do business with your rig?

A. I do not always start out at the same time; if anyone comes for my rig, although it be midnight, I hitch up.

Q. But you do not leave your house to solicit passengers in the streets; are you not at a regular place where rigs are stationed awaiting the arrival of passengers?

A. At times I go out into the street.

Q. At what hour in the afternoon do you ordinarily go out with your rig?

A. Well, I cannot say, because I do not always leave at the same time.

Q. But at *whour* of the night do you return to your home with your rig?

A. The arrival of the drivers is not always the same.

Q. But many times you return about 8 o'clock, 10 o'clock at night?

A. No, sir; well, I cannot say the hour that I arrive because the returning time of the drivers is not the same.

Q. But sometimes you have returned to your house at 9 or at 10 o'clock at night with your rig?

A. I cannot say.

Q. You voted in Gapán at the past elections?

A. I do not remember.

Q. Is it not true that you are not eligible or were not eligible to vote at the past elections?

Fiscal: I object.

The Court: Objection sustained.

Ledesma (continued): Is is not true that the wife of Eusebio Yuson gave you a piece of land in order that you could vote at the recent, past elections?

A. I do not remember if she gave it to me or not.

Q. Are you a relation of the wife of Eusebio Yuson?

A. No, sir.

Q. You are a neighbor of Antonio Abad?

A. No, sir.

Q. How far is it from your house to the house of Antonio Abad?

A. I cannot say because I have not measured it.

121 Q. You understand Spanish, do you not?

A. No, sir.

Q. What did the wife of Eusebio Yuson say when you told her that at the proper time you would tell all that you knew regarding the occurrence that took place in her house?

A. She thanked me, because I had told the truth.

Q. Did she not insist then upon knowing what you knew?

A. No, sir.

Q. And is it not true that you have told the same to other persons?

A. No, sir.

Q. Do you know Antonio Abad?

A. Yes, sir, I know him.

Q. You told him that same story that you have told the wife of Eusebio Yuson, that at the proper time you would tell all the truth?

A. I did not tell Antonio that.

Q. Who lives with you in your house?

A. My wife.

Q. Who else?

A. No one.

Q. Who is your most intimate friend?

A. I have no friend.

Q. No more.

Fiscal:

Q. Have you not at times transported the widow of Eusebio Yuson in your rig?

A. Since I bought her rig and horse.

A. This witness is no longer required.

122

Statement of José de los Santos.

This witness, being duly sworn, stated his name is JOSÉ DE LOS SANTOS, 46 years of age, municipal president of the board of health, and a resident of Gapán, Nueva Écija Province, P. I.

Direct examination.

Fiscal:

Q. Where are you president of the board of health?

A. Of the municipality of Gapán, Nueva Écija Province.

Q. Have you knowledge of the death of Eusebio Yuson?

A. Yes, sir.

Q. Have you examined the body?

A. Yes, sir.

Q. What did you discover? No, I withdraw the question. Have you issued a certificate of the examination that you made?

A. Yes, sir.

Q. Look at this document, Exhibit A of the prosecution, and state what it is (handing to the witness Exhibit A).

A. This is the certificate that I issued to the fiscal (prosecuting attorney) that has charge of this case, on the 4th of July of this year, and I corrected the entire contents of this certificate.

Q. Where did you obtain the data that is stated in this certificate?

A. From the wounds on the body of the murdered man, Eusebio Yuson.

Q. When did you obtain this data?

A. On the same night of the occurrence.

Q. Did you make any computation of that data?

A. Yes, sir, and I filed with the justice of the peace of 123 Gapán such a statement made under oath.

Q. Now state what you saw on the corpse?

A. I saw various wounds on the corpse, produced—it seems—by a firearm: 9 wounds caused by bullets entering the right side of the back; 5 wounds caused by bullets coming out on the same right side of the front part of the chest, the widest of which wounds measured some 6 millimeters, more or less, in extension or circumference. The wounds caused by bullets entering the back were separated from each other as far as 2 centimeters, and others also as far as 17 centimeters apart, more or less; and the wounds where the bullets had come out were separated also from one another as far as 12 centimeters. These wounds were produced by small projectiles or by small bullets which could have lodged in the right lung and in the other important arteries which are in the thoracic cavity, causing a hemorrhage due to which death followed almost instantaneously.

Q. When you saw the corpse where was the body placed?

A. On a bed.

Q. But was the deceased then living or not?

A. He was a corpse.

Q. Did you see the clothes he was then wearing?

A. Yes, sir.

Q. I show you a shirt, which is marked Exhibit B of the prosecution, and ask you to state if you have seen it before now?

A. I have seen this shirt which was on the body of Eusebio Yuson.

Q. Can you tell by the wounds that you found on the body of the deceased, from the location of said wounds, the position of the deceased at the time he received those wounds, and also the position of him who fired the shot that produced those wounds?

124 Ledesma: I object to the second part of the question, because the witness is not an expert on firearms.

The Court: The witness may answer.

A. I cannot say.

Fiscal (continued):

Q. I now show you an undershirt, marked Exhibit C of the prosecution, and ask you if you have seen it before now?

A. This undershirt seems like the one the deceased, Eusebio Yuson, wore.

Q. I also show you a small bullet which I ask to be marked as Exhibit D of the prosecution, and request that you state to the court if with a bullet of this size there could have been caused said wounds which you found on the corpse of Eusebio Yuson?

A. They could have been caused by the class of bullets such as this one.

Q. Were the wounds you saw on the back of the murdered man and those which you saw on his breast on the same level or not?

A. Not all of them; some of them were upon other wounds, that is above other wounds, and those in the breast were situated a little higher than those in the back.

Fiscal: I present as proof the certificate issued by the witness, the shirt, the undershirt, and the small bullet.

Southworth: I object to the admission of the certificate, Exhibit A, because it is incompetent.

The Court: All the exhibits are admitted in evidence except Exhibit A, which is the certificate.

Chicote: I have no questions to ask the witness.

Statement of Perfecta de Guzman.

This witness, being duly sworn, stated her name is PERFECTA DE GUZMAN, 59 years of age, a servant of the house, and a resident of Gapán, Nueva Ecija, P. I. (A. Gempezao, interpreter.)

Direct examination by Prosecuting Attorney:

Q. Do you know one Eusebio Yuson?

A. Yes, sir.

Q. What relation was he to you?

A. My husband.

Q. Where is your husband now?

A. He is in the cemetery.

Q. Why is he in the cemetery?

A. Because he died.

Q. When did he die?

A. March 17th.

Q. What year?

A. This year, 1912.

Q. At what hour did he die?

A. I do not know the hour, but it was at the time of the arrival of the train from San Miguel, when he came on his last journey.

Q. From where did your husband come that night?

A. From San Miguel.

Q. Where were you when he arrived?

A. I was at the window.

126 Q. How did your husband arrive?

A. In a carromata (rig).

Q. And what did you do when you saw your husband arrive?

A. I directed him to pass into the hall because there was a light prepared there.

Q. State the words that you said, more or less, on that occasion?

A. I said to him, "Go into the hall because a light is prepared here, and there it is dark and you might fall down as you have poor eyesight."

Q. And what — he reply?

A. He looked at me, and he said to me, "No, I shall pass by here."

Q. And what happened afterwards?

A. When he did not wish to enter by way of the hall, he entered by the doorway of the house, and I then went out to find him.

Q. Where did you go, in what direction?

A. To find him.

Q. Where, at what place?

A. On the azotea (an uncovered back porch of a house in Spanish-speaking countries, generally on the second story).

Q. And what occurred?

A. I went out and on arriving at the head of the stairway in the house I heard a shot, and I fell down in a seated position.

Q. And what did you do afterwards?

A. After that I heard the servants, who were lying down on long chairs, saying, "Bring a light because a disaster has occurred," and then I commenced to run.

Q. And what did you find?

A. I saw my husband face downward on the stairway.

127 Q. On what part of the stairway was your husband?

A. On the stairway itself; he was falling when I arrived.

Q. In what position was he when you found him?

A. He was face downward.

Q. How many steps from the head of the stairway did you find him?

A. He was on the fourth step, where I found him.

Q. How did you find him there, alive or dead?

A. Already dead.

Q. Do you know if the murdered man or your family has any enemies or any persons with whom you were on bad terms?

A. There are some persons who wish him bad.

Q. Why did they wish him ill?

A. It is the custom of the owners of the crops or the harvesters, as my husband was a very hard-working man who always tried to advance in his work.

Q. And what of that? Who is the person who wished your husband ill?

A. The neighbors or those adjacent to us in the seed-field.

Q. Who are those persons?

A. Francisco Amante and Emilio Valdez, because you know this is the third year that my husband (as water was scarce as it is now) asked the tenants of Mariano Atacador for water, and they wished to give it to him; and instructed that a canal be built alongside the railroad, and our tenants constructed it.

Q. And what else?

A. The canal being built, the water ran toward our seed-field.

Q. And afterwards?

A. As they saw much water was running, they ordered the canal closed.

Q. Who ordered the canal closed?

128 A. It is said that Emilio and Quico ordered it.

Chicote: We ask that that part which is hearsay be excluded from the record.

The Court: It is so ordered.

Fiscal: Where are your lands or those of the deceased located?

A. In Santo Cristo.

Chicote: By agreement of the parties hereto, it is stipulated and agreed that the lands of the Yuson family are adjacent to those of the Valdez family, and that they are in charge of Francisco Amante as agent.

Fiscal (continued):

Q. Do you know if your husband has had any dispute with the family of Emilio Valdez in regard to the land?

A. Yes, sir.

Q. Of what does this dispute consist?

A. It is here in the office (court), the proceedings of that litigation.

Q. Do you know if, in addition to the dispute over the land or the water, the deceased had any other dispute?

A. In regard to the lands and the *and the* irrigation of the tenants and the question of the water.

Q. Before those proceedings in regard to the question of the water and the land, what relations existed between your family and that of Emilio Valdez?

A. Good relations.

Q. Those relations changed?

A. Yes, sir.

Q. When?

A. After those questions arose.

129 Q. In what way have those relations changed?

A. In the manner of the sowing of the land and of the treatment which are not the same as before.

Q. Before those questions arose did the Valdez family go to your house?

A. Yes sir.

Q. They visited your family?

A. Yes, sir, they came to our house.

Q. And after those questions arose, did they do the same?

A. No, sir.

Chicote (cross-examination):

Q. How many shots did you hear on the night of the occurrence?

A. Only one shot when my husband died.

Q. Did you hear no other shot that night?

A. When I cried out to the other house, that of our neighbors.

Q. How many shots occurred then?

A. I cannot determine on account of the impression I received due to the death of my husband.

Q. Were you in the window before the arrival of your husband in the carromata (two-wheeled vehicle drawn by one horse), that is were you looking for the arrival of your husband?

A. Yes, sir, I was looking for his arrival.

Q. Had the light at the entrance been placed there before his arrival?

A. Yes, sir, it was within the hall.

Q. When he arrived did you give an order to the male servant to go upstairs in the house for a light, and order him to bring it downstairs, in the hall?

A. No, sir; I myself carried the light downstairs.

130 Q. Did you not give any order in the sense of asking them to bring a light?

A. No, sir.

Q. The light was already downstairs when your husband arrived in the rig, was it not?

A. Yes, sir.

Q. Ordinarily, when your husband went out which way would he go, which way would he go up into the house on returning, or what was his ordinary place of departing or entering the house?

A. By way of the back upstairs porch.

Q. Was there ordinarily a light on the back upstairs porch?

A. No, sir.

Q. And how did it happen that that night you said to him, "Do not go up this way because it is dark and you might fall," when ordinarily he would go that way and not fall, it also being dark?

A. For the very reason that it was dark, and besides the light was already prepared in the hall.

Q. And why did you prepare the light in the hall, or is it that you wished your husband to go by way of the stairway of the uncovered upstairs back porch?

A. I think so, because the door to the hall downstairs is open, in order that the rig might go out.

Q. But when your husband arrived the door of the hall was closed, was it not?

A. It was open.

Q. How long was it from the time your husband started to enter by the door (that door) of the stairway until you heard the first shot?

A. I cannot determine the time because when I saw him enter by the portal at the same time I went out.

131 Q. From the window where you were to the stairway where you fell down in a seated position upon hearing the shot is not the distance equal to that of the entire length of this building in which the court is located, more or less?

A. Yes, sir, it may be this distance (by agreement of the parties the distance is agreed to be some 12 or 15 meters).

Q. Can you determine how long it was between the moment you heard the shot and the moment in which you heard them saying or crying that a light be brought because a disaster had occurred?

A. I cannot determine.

Q. State if the cry followed immediately after the shot, or if it occurred a little later, if you can measure the time?

A. A little moment; that is something I cannot determine precisely.

Q. Do you know who the person is who made that outcry? Was it a male servant, a female servant, or was it made by several persons?

A. The male servant and the female servants, both of whom are old.

Q. After you fell down in a seated position did you arise immediately, or were you seated there a little time when you fell?

A. Upon hearing that request to bring a light because a disaster had occurred I arose immediately and ran outside.

Q. You went in the direction of the back porch, did you not?

A. Yes, sir.

Q. And there you went to see how your husband had fallen and to pick him up, did you not?

132 A. Yes, sir, and I was calling to him, but he was already dead.

Q. Immediately did you not enter, and other persons took charge of the deceased and carried him within the house?

A. No, sir, because we could not carry him.

Q. And then you sent out for help to carry him inside, did you not?

A. I called the little children of the house, my nephews, who were asleep in the house.

Q. And from the time that you ran to the place where your husband was did you then leave there and return, or did you remain at that place from that time until your husband was taken inside the house?

A. Upon seeing that my husband was dead I ordered the two male servants to watch the deceased, and I went to call my nephews who were asleep in the house, and afterwards I went to the kitchen to call my other nephews, saying, "Fernando, Candin, come here because a disaster has occurred to your uncle."

Q. After the occurrence did you not appear before the municipal president and the justice of the peace of Gapàn?

A. I wanted them to know what had happened.

Q. Then they went there to ask if there was enmity between your husband and any person, and you then replied that you did not know if your husband was on bad terms with any one?

A. At that time I did not know what I did, owing to the impressions I had received.

Q. State if it is not true that on that occurrence you were declaring the following, "But I remember that my husband had had

trouble with Simeon Linsaňgan regarding the redemption of lands which someone owed to said Mr. Linsaňgan and had mortgaged the land, and my husband, the deceased, had supplied money to the mother in order to redeem the land?"

133 A. I do not remember because at that time I did not give an account of what had happened, owing to the impressions received.

Q. That affair or that question of lands between your husband and the Valdez family occurred 3 or 4 years ago, did it not?

A. Yes, sir, in 1908.

Q. The land question was it not between the years 1905 and 1906?

A. I do not now remember.

Q. Is it not true that that question was a subject of litigation in the court regarding the boundary line of both properties.

A. Yes, sir.

Q. And is it not true that that suit terminated in a transaction made by your husband with the Valdez family?

A. I think so, but I do not know for certain; well, there is Mr. Pedro Carmen who was our attorney (pointing out Mr. Carmen in the courtroom).

Q. Referring to that question of water, is it not true that that incident occurred more than 3 years ago?

A. What, the irrigation?

Q. The question of irrigation that had been in controversy between your husband and the Valdez family?

A. This is the third season of the waters since then (in the P. I. there is only one so-called rainy season annually).

Q. Do you know if on that occasion Emilio Valdez, Francisco Amante, Andrea or any member of the Valdez family, had high words or came to blows due to any quarrel or dispute directly with your husband?

134 A. Andrea, no, sir; Emilio and Francisco, yes, sir.

Q. What was there between them?

A. Where?

Q. In the canal itself; did they come to blows?

A. No, sir; a quarrel only.

Q. Were you present when that occurred?

A. No, sir; I was in my house.

Q. And how was the question settled?

A. Later it was settled, because my husband again opened the canal which they had closed.

Q. And did the canal remain closed or did it remain open?

A. My husband ordered it opened.

Q. And did it remain open or was it closed again?

A. It did not continue open.

Q. Do you know if your husband had any question or there was any trouble between your husband and the railroad company?

A. Nothing.

Q. After those disputes did you and Andrea speak to each other

when you met in the street, at church, or at whatever place you met each other?

A. I did not leave the house frequently.

Q. Good, but sometimes when she would meet you or you would meet her, would you speak to each other as friends or acquaintances?

A. I did not leave the house, and we did not see each other.

Q. You have met at some time Francisco Amante or Emilio Valdez in the street, at church, or at some other place?

A. We would see each other, but at a great distance when we were about to meet.

Q. Do you not remember that you had been playing "panquin-gui" (native gambling game) with any one of the Valdez family in the house of your nephew called Andoy?

135 A. I have seen him there.

Q. Is it not true that when you were playing and he was playing, you and he were not playing against each other, but were on the same side?

A. We were playing against each other.

Q. When your husband would go to the plantation or to San Miguel, or when he would leave the house, would he be armed or without a weapon?

A. If he went to play in the cockpit he carried no arms.

Q. And when he went to any other place in Gapan would he be armed?

A. No, sir; except when he would go to the grain field.

Ledesma (cross-examination):

Q. Showing you this rough draft, have the kindness to tell me if, supposing that the point 1 is your house, have the kindness to tell me, I repeat, if the No. 2 is the door of your house, more or less?

The Court: Before all, the court wishes to know if the witness understands what a rough draft is?

Witness: If it is well drawn, I know.

The Court: Good, now answer the lawyer.

A. It is not drawn here, and I do not know it (looking at the rough draft).

Ledesma (continued):

Q. The stairway, by way of which your husband passed on the night of the disaster, is situated on the outside of your house and attached to the left wall of the house, is it not, as one would face the house from the street?

136 A. The stairway is not attached to the wall.

Q. But being toward the left side of the outside of the house one would face the house from the street?

A. Yes, sir, going up into the house the stairway is on the right side.

Q. No, I ask regarding the stairway by way of which your husband went up on the night of the disaster?

A. Yes, sir, it is outside, on the outside part of the wall of the house and towards the left side going up.

Q. And towards the left side of that stairway there is a fence of bamboo, is there not?

A. Yes, sir.

Q. Were there any dogs in your house on that night of the occurrence?

A. Yes, sir, they were in the house.

Q. A few moments before the arrival of your husband did you note the barking of the dogs?

A. They were in the house because the little children were eating, and the dogs could not bark.

Q. But those dogs were they not accustomed to be under the house, in the lot?

A. After the meal or after they had gathered together outside they were accustomed to go under the house.

Q. In front of or near your upstairs-uncovered-back porch in the lot adjacent to your house there is a small house with dogs, is there not?

A. There is a very small house there, but the dogs do not live there.

A. Who lives in that house?

A. At night our laborers who cut grass sleep there.

Q. But in the surroundings of your house and in the street itself in front of your house is it not true that the dogs are constantly there, dogs of the street or from other parts?

137 A. I do not know if they gather there, because after the meal the dogs are put outside.

Q. But, as a matter of fact, is it not true that you did not hear the barking of the dogs that night some moments before the disaster occurred to your husband?

A. Why should they bark if they were in the house?

A. No, did you hear the barking of the dogs at any location or other place?

A. I did not hear any barking.

Q. Have you and your husband any children? any sons?

A. We have no sons.

Q. And he, did he not have sons by another woman?

Fiscal: I object to the question; irrelevant questions cannot be asked here.

Ledesma: I withdraw the question.

Q. Who are the persons nearest to you or relatives?

A. Our nephews, mine and those of my husband.

Q. Those are your heirs-apparent?

A. Yes, sir; he also had a daughter when he was a bachelor.

Q. After the death of your husband, after some days or 3 days, did anyone talk with you regarding the division of his estate?

A. No.

Q. And really no one has referred to his estate or has made claim to the estate of your husband?

A. No one, I myself voluntarily have asked the court to make a division of our property.

Fiscal:

Q. Those relations which were changed on account of the irrigation canal were they resumed before the death of the deceased, Eusebio Yuson?

138 Chicote: The witness has already testified on that point, your honor.

The Court: The witness may answer if those relations were resumed.

A. I cannot say if harmonious relations were resumed, in view of my not leaving the house; but he was the one who went to the grain field.

Fiscal:

Q. Is there not a fence at the side of the back porch of the house or at the side of the stairway?

A. Yes, sir.

Q. How long has that fence been there?

A. What fence? That which is at the stairway.

A. The fence that runs lengthwise of the stairway of stone of the back porch, or that is, the bamboo fence that is there that is already destroyed? No I withdraw the question. What kind of a fence is there at the side of the stairway of stone?

A. After the death of my husband I ordered to be put there a wire fence between out lot and that of Adorable.

Q. What fence was there, or what fence was at the side of the stairway itself?

A. A bamboo fence.

Q. At the time of the occurrence of the deed, in what condition was that bamboo fence which is located at the side of the stairway?

A. The fence that is at the side of the stairway has not been changed and was of high bamboo.

Q. And the fence that surrounds your property in what condition was it?

139 Ledesma: I object to the question as immaterial.

The Court: The witness may answer.

A. The fence that surrounded the limits of our property was destroyed.

Q. That is all.

The Court:

Q. Was your husband accustomed to go to San Miguel de Mayo?

A. Yes, sir; after the harvest of unhusked rice he had played firstly two times at San Bernardo, and after those two times he was playing at the cockpit of San Miguel.

Q. Well, how frequently did he go to San Miguel after the last harvest?

A. Each day that the cockpit was open.

Q. The last time he went to San Miguel how long did he remain there, or how long did he remain away from your house?

A. When he arrived it was the hour of the arrival of the last train in Gapán.

Q. At what hour did your husband depart to go to San Miguel?

A. On Sunday on the 8 o'clock train which goes in the direction of Manila.

Q. And did he return on the same Sunday, that night?

A. Yes, sir.

Q. Nothing more.

Statement of E. W. Crockett.

This witness, being first duly sworn, stated his name is E. W. CROCKETT, captain of Constabulary, married and a resident of S. Ysidro, Nueva Ecija Province, P. I. (Mr. Buencamino acted as interpreter under oath.

140 Direct examination by Prosecuting Attorney:

Q. Where do you live?

A. In San Ysidro, Neuva Écija.

Q. When did you learn of the death of Eusebio Yuson?

A. March 17th.

Q. What are the circumstances under which you learned of the death of Eusebio Yuson?

A. I received notice from my sargeant at Cabanatuan.

Q. And what did you do after receiving that notice?

A. I came immediately to Gapán on motorcycle.

Q. And what did you do in Gapán?

A. I investigated the cause or the motive of the assassination.

Q. What steps and what action did you take to investigate the fact of the assassination?

A. I visited the place of the assassination, looked at all the surroundings, and asked questions of such persons as I thought could give any information; but there being then so much excitement there I could not obtain satisfactory information.

Q. And what did you do further after that?

A. I made a report of the affair to Manila, and ordered various patrols to investigate the place in Gapán where the crime was committed and the surroundings of Gapán.

Q. Did you find anything at the place of the crime?

A. Yes, sir.

Q. What is it that you found there.

A. I found two wads from a cartridge.

Q. And what else did you find?

A. I looked everywhere there for the empty cartridge, but I could not find it.

141 Q. And what else did you do?

A. I tried to ascertain the direction of the shot and the place where the shot was fired, and my opinion is that it was there near a tree, from below.

Q. How did you come to the conclusion that the shot had been fired from below, from the tree? ?

A. I was not able to know that, but it was my deduction from what they told me regarding the position of Eusebio Yuson on the stairway.

Q. What experience have you had, captain, regarding firearms and their effect when fired?

A. You refer to my personal knowledge?

A. Yes, sir.

A. I have hunted many kinds of animals and have used during all my life all kinds of firearms, rifles, shotguns.

Q. Have you seen the wounds on the body of the murdered man?

A. That is to say, I have seen the bandages.

Q. But did you see the wounds themselves?

A. I have not seen the wounds themselves, on the body.

Q. I show you Exhibit B of the prosecution, which is a shirt, and, calling your attention to the holes that appear on the right side of the back of said shirt, as well as to the holes that appear on the right front side of the shirt, ask you now in view of that what was the relative position that he must have assumed, or what must have been the relative positions of the person who was shot and that of the person who did the shooting?

A. I should say he was almost directly behind him, but it is possible that he might have been a very little toward the side of the person who was shot, and in a lower position. (The witness demonstrated with his hand a direction from the ground upwards).

142 Q. Judging by the direction of those holes, where must have been the murdered man and where must have been the murderer?

A. Do you mean to say in regard to my observations on the ground itself?

Q. In regard to the direction of the wounds.

A. Judging from what I see here, it is my opinion that the shot must have come from this direction (indicating with his hand in the direction behind him on his left side and toward the ground).

Q. I show you Exhibit C of the prosecution, which is an undershirt, which you will examine and state if the holes that here appear correspond or do not correspond to those holes in Exhibit B?

A. Yes, sir, they correspond; yes, the holes are new ones, entering in this large hole (indicating the largest hole in that part of the shirt covering the back, Exhibit B); yes, it seems that here there entered if not two, three small bullets, but no, it is possible that there were only two that entered there.

Q. In accordance with what you have said, do you mean to say that the person who discharged the shot was below, and the body of the murdered man was above? Is that not it?

A. In my opinion, yes, sir.

Q. Showing you this Exhibit D, which is a small bullet, state to the court if you have seen this before now?

A. Yes, sir.

Q. Where did you obtain that small bullet?

143 A. I obtained it from the justice of the peace of Gapán.

Q. Can you state if the holes that appear in Exhibit B and Exhibit C might have been caused by small bullets of this size?

A. Yes, sir.

Q. You said you found the wad of a cartridge; have you that wad?

A. Yes, sir.

Q. Will you show the wad to the court?

A. Yes, sir (showing the court the wad marked Exhibit E of the prosecution).

Q. Where did you find that wad that you have just shown the court?

A. I found it to the right of the stairway in an open corner which is there.

Q. Showing you this shotgun, state to the court if you have seen it at any time before?

A. Yes, sir.

Q. Do you know to whom this shotgun belongs?

A. Yes, sir.

Q. To whom?

A. It is the property of Francisco Amante.

Q. Do you know if Francisco Amante has a license issued in his name to possess a shotgun?

A. Yes, sir, he has, the number of which is 325808.

Q. Showing you this license to possess a firearm, can you state to the court to whom it was issued, that license? (said license is marked Exhibit F).

A. The original of this license was issued to Francisco Amante.

144 Q. Can you state if the number of that license corresponds with the license here presented?

A. Yes, sir, it is the same.

Q. Where did you obtain that shotgun?

A. I took this shotgun from Francisco Amante.

Q. What is the caliber of the wad you found there?

A. I think it is 12-caliber.

Q. And what is the caliber of the shotgun which you took from Francisco Amante?

A. 12-caliber also.

Q. What kind of cartridges or ammunition could or would be used in that shotgun?

A. Ordinary paper cartridges may be used, or also copper (brass); those cartridges are loaded with small shot or small bullets.

Q. How many small bullets are contained in one of those 12-caliber cartridges?

A. There are different sizes, but the siz "00" contains nine small bullets; this mark "00" is known technically as such, but it does not always appear marked with this character "00" on the cartridge.

Q. What is that which the cartridges marked "B" contain?

A. Small bullets.

Q. How many bullets is each one supposed to contain?

A. Each one is supposed to contain nine.

Q. What is the size of those small bullets?

A. I cannot tell exactly the size of those small bullets contained in the cartridges "B," but sometimes those cartridges are marked with "O," and other times with "OO." I wish to say that the letter "B" applies to all cartridges that contain small bullets, but
145 that the small bullets, differ in size, being designated with "OO" and with "O," but generally each cartridge contains nine small bullets.

Q. How many small bullets of the kind of Exhibit D can one cartridge contain?

A. This small bullet is crushed or flat, but it is of the kind of which there are nine in each cartridge.

Q. Did you find signs or marks of small bullets in the vicinity of the place where the murder occurred?

A. Yes, sir.

Q. Where?

A. In the cement between the bricks of the pillar of the stairway.

Q. On which side of the stairway?

A. On the right side of the stairway.

Fiscal (prosecuting attorney):

We present as evidence Exhibits E and F, and ask that also the shotgun which we present at the same time be marked Exhibit G as evidence.

Chicote:

The court will decide.

The Court:

Exhibits E, F, and G are admitted as evidence of the prosecution.

Chicote (cross-examination):

Q. When did you go the location of the occurrence?

A. The morning following the occurrence.

Q. You state you inspected the place and its surroundings, did you not?

A. Yes, sir.

Q. And how did you find the place in general? Was it fenced in with bamboo, wire or any other class of metal, or was it open?

146 A. It was surrounded by a fence, which at some points was in bad condition; the fence facing the street was complete and open, as it was facing the street in front of the house, and as there was a large gateway there I did not notice that, that is to say the fence facing the street.

Q. But there had been a fence there?

A. Yes, sir.

Q. On the other side of the lot facing the road or the adjacent street in the direction of the church, did you also see a fence?

A. Yes, sir, also of bamboo.

Q. Now, with reference to the two other sides of the lot, was there also a fence there?

A. If so it was at such a distance that I did not observe it.

Q. What height, more or less, did those fences have that you saw around the lot, not on the inside?

A. The outside fence at the side of the entrance I did not notice very well, but I would think it was about 7 feet high, but the street fence on the other side was 4 feet high, more or less.

Q. On the inside near the stairway did you see another fence, running from the fence on the street along the entire length of the stairway?

A. Yes, sir; it also was in very bad condition.

Q. What height, more or less did the fence have?

A. Some 4 feet also; I cannot state positively, but approximately.

Q. If one were to stand on foot behind the fence, how high would it be, approximately?

A. As high as my chest.

147 Q. Now, do you think that a man situated or concealed behind that fence would be able to shoot with a shotgun?

A. I believe so.

Q. Now, would the shot go in the direction of the stairway, in the direction of the roof of the house, or against the fence?

A. That bamboo fence is open, and the shot would go in the direction the gun was pointed; and I have just stated that the fence is in bad condition in part, is broken.

Q. Now, suppose that the man is concealed behind the fence, and therefore must be where the fence is, and nowhere else, I wish to know if it would be possible for a man to be thus concealed in such a position, or approximately so, as described by Gatmaitan, in a crouching position?

A. Yes, sir, because I myself have proven that position; I proved if it would be possible to do it in the same place, and it can be done.

Q. Where do you think the man fired the shot? In what place or at what part of the fence?

A. What do you mean by "at what part of the fence?"

Q. At what point, at what place, do you think he fired the shot?

A. There was a tree there, but I do not remember what kind of a tree it was, but it was of this circumference (indicating some 20 or 30 centimeters), and he would have been at a place near that tree.

Q. And did you see any signs there near the tree?

A. Yes, sir.

Q. You also picked up there, did you not a metal cartridge shell?

No, sir.

148 Q. Did you not pick up in the lot any other metal cartridge?

A. None; I searched there carefully for a metal cartridge, and did not find it.

Q. In what direction is the location of the stairway in regard to the place where you suppose the man was who fired the shot, or, better stated, what angle is formed by the front of the house, the location of the stairway, and the place where you think the person was located who fired the shots?

A. I cannot state exactly, but surely it was an angle of 20 degrees.

Q. A sharp angle?

A. I refer from the lot to the stairway which is an angle of almost 20 degrees, more or less.

Q. I wish to know what angle is formed by the three following points; the corner of the house nearest the side of the street near the place of the occurrence; the location of the house where the murdered man fell; and the point where the tree was and where you think the man was who fired the shot.

A. That is to say — (interruption).

Q. No, what would be the angle necessary between this point at the corner of the house, this point marked on this paper (showing the witness the paper or rough draft), facing the corner and the house where the occurrence took place, and the fence to which you refer in your statement?

A. If this be compared with that, this fence here is exaggerated (indicating on the paper).

Q. You may approximate it as you wish.

A. This place which is here marked is the location where the man was, supposing that this is the entrance, this fence here is the one that is toward the street (looking at said paper sketched
149 by Mr. Chicote).

Q. But without considering that, the man would be located at the fence would he not? But the angle mentioned by you would it be an acute angle, approximately of 35 degrees?

A. I cannot say that, because I have not examined the ground with the idea of locating angles.

Q. Did you calculate the distance from that point, where you tried to place the man, to the stairway?

A. I have not calculated it by means of a measure, but by merely looking at it: perhaps 30 feet, or perhaps more.

Q. You, as captain-inspector, are the person charged with passing upon firearm licenses, ammunition, etc.

A. Yes, sir.

Q. You state you found this wad marked Exhibit E. Do you know what is the origin of this wad? Where it was bought.

A. I have no means of knowing officially where the ammunition was bought, but this wad has its mark.

Q. You, as captain-inspector, do not necessarily have to know where the persons who have firearm licenses have obtained their ammunition?

A. No, sir.

Q. Is it not a fact that in order to purchase ammunition it is necessary to have permission from a captain-inspector of Constabulary?

A. Yes, sir.

Q. Very well, if your permission is necessary in order to buy ammunition you know what kind of ammunition each person who has a firearm license must have?

A. No, sir; the request for the purchase of ammunition comes to me on a regular form as follows: 200 cartridges, license
150 number so and so, and I sign the permit, and they present it to any supply store in Manila, and it is sold to them.

Q. After you found this wad at that place, did you make any investigation in order to ascertain who had bought cartridges and at what store, if in the store of Richter or at any other store where those cartridges might have been purchased?

A. I did not go directly to Richter, but I ordered an investigation by my agents, and the result is that the supply stores do not keep a record showing to whom they sell ammunition. I know that because someone at Constabulary headquarters told me that no record is kept of the sales of ammunition, to whom sales are made.

Q. But, captain, is it not a fact that the seller of ammunition must retain the permit issued by the Constabulary in his possession as a guaranty that he has made the sale?

A. I cannot state what is really the practise now, but I have an idea that it is the same as before; that the seller sends it to Constabulary headquarters to be filed there.

Q. In that case Constabulary headquarters can tell in a moment the number of cartridges in each province, and who the person is who obtained those cartridges, and which is the establishment where those cartridges were purchased?

A. If my presumption is correct.

Q. But did you make an investigation in this respect?

A. No, sir, because I did not think it important; there is so much ammunition bought and sold, and changed there —

Q. But do you not believe that it was an indication or a point of sufficient importance for you to find at the place of the occurrence a wad marked "Richter" and that you should have searched for something tending to demonstrate from whence came the
151 object using in the killing?

A. I cannot state; besides there were other shots there that night, and one could not be assured from where this wad came; and, further, it is the custom of the people here to borrow ammunition from each other.

Q. But in that case you did not take any action to ascertain who in the town of Gapán had made that purchase of ammunition at the store of Richter?

A. No, because the success of a prosecution cannot depend on a wad.

Q. When you were at the place of the occurrence what statements were made to you in regard to the shots fired at that location? How many shots had been fired there, were you told?

A. They told me that one shot was fired, and after that one there were 3, 4, or 5 shots in addition fired there.

Q. Were those shots fired in the lot close to the stairway? Or where?

A. They told me that after the first shot, there were also fired other shots in the house close by.

Q. You were examining the side of Eusebio Yuson's house that faces that house nearby, were you not?

A. Yes, sir.

Q. And you were also examining carefully a window that is on the side of the house or of the entranceway of Yuson's house, were you not?

A. No; I did nothing more than to enter the house of Eusebio Yuson and look around there.

Q. No, I should like to know if you were examining carefully from the window which is on the side of the entrance of the house of Eusebio Yuson?

152 A. I have not examined attentively any window; they might have been there in that window; I do not know.

Q. Were you not examining the surroundings of the house, looking for footprints or anything else of an analogous nature?

A. I walked all around the house looking for cartridges.

Q. Were you not looking for tracks where persons might have entered or left the house?

A. I might have done that, but as there had been so many people that *led* entered and left there, and as there was no other place where there were tracks near the house and as there were none, that is why I do not know that which you wish to ascertain.

Q. Do you know if you examined from the window which is there, or better stated, if you were examining the footprints that were there at the foot of the window, and if you afterwards examined the window itself?

A. I do not remember that I did that, but if I had done so it would have been of no importance or could have had no value because I do not now remember it.

Q. You have seen the holes in this shirt and undershirt, marked Exhibits B and C?

A. Yes, sir.

Q. And you have also stated that the holes coincide?

A. Yes, sir.

Q. You have noticed that the shirt has 4 holes and that the undershirt has 7?

A. I have counted both of them, and it seems that nine small bullets had entered them.

Q. But I refer to the shirt that has four entering holes, some large and others small, and the undershirt instead has 7 entering holes, not 4 but 7 distinct entering holes. Why is that?

153 A. I have not counted them; it seems to me that both have more than that number.

The Court (addressing Mr. Chicote): You may demonstrate it by showing the shirt and the under shirt to the witness. (Mr. Chicote does so, Exhibits B and C.)

A. This shirt has 7 holes, but 9 entered, and the undershirt 7 also.

Chicote (continued):

Q. Will you tell me, by examining the clothing itself of the murdered man, in what direction and forming what angle with respect to the dorsal spine the small bullets went, between the wounds where the bullets entered and the wounds where they came out?

A. One cannot exactly state that, because one does not know what bones were pierced by the small bullets after entering the body, but my opinion is the same as before.

Q. In your opinion, as an expert in firearms, do you not believe that in firing a shot from the left side of a person the projectile always tends to come out on the opposite side, or the right side, whatever may be the resistance opposed to it?

A. I do not know, because one cannot say that, sir, as a person does not know what a bullet can do; I know of a case where a bullet struck the forehead and passed from here on behind (pointing to the back of the neck), but it did not come outside, that is to say, it entered the skin, and followed the circumference of the skull, and it seems that the bullet pierced the skull, but it was not so.

Q. Tell me is it not true that the clothing would be marked if the bullets came out near the breast-bone?

154 A. The holes in the shirt would demonstrate that, but I would not be able to assert anything positive regarding that.

Q. Then, you neither can tell us positively, nor even express an opinion in an affirmative manner, that the man who fired the shot was behind or that he was to the right or to the left? Neither can you assert that positively?

A. Look at the record; I have stated that in my opinion the man who fired the shot was to the left and behind.

Q. But your opinion is that the other man was well situated or concealed?

A. I base all that I say upon what they told me there; it was simply my opinion, nothing more, but I have not stated positively that such was the case.

Q. Do you know what kind of ammunition Francisco Amante was buying for this shotgun, marked Exhibit G?

A. In regard to cartridges, nothing more is stated than 200 cartridges, 12-caliber, etc.

Q. But you do not know that this shotgun was bought at the store of Alkan & Co.?

A. I do not know where it was bought.

Q. Do you remember, captain when, more or less (about), this shotgun was acquired by Francisco Amante?

A. I think it was during the past autumn, but he had not had this shotgun very long.

Q. Do you know how many times there has been issued to Francisco Amante permits or authorization to buy ammunition?

A. I do not remember that; I do not know.

Q. What is the date it appears the license was given to Francisco Amante to buy the shotgun?

A. Before receiving the license he received the permit to buy the shotgun, and that permit was presented to the seller.

155 Q. Nothing more.

Southworth (cross-examination):

Q. Is it not a fact, captain, that the greatest number of the shotguns which are sold and used in this part of the country are of 12-calibre?

A. I think that the greatest number of the shotguns, yes, sir.

Q. The permit to buy a shotgun always bears a previous date to that of the license for the same; to that of the license itself?

A. Yes, sir, they have to buy the shotgun previously to the issuance of the license, to know the number.

Q. Then, Francisco Amante must have received the permit to buy the shotgun before November 23, 1911?

A. Yes, sir.

Q. Have you not stated that the holes that were made here in this shirt might have been made by a small bullet of the size of the one shown to you?

A. Yes, sir.

Q. And is it not true that they might have been made by a larger bullet, or even one smaller than that one?

A. Certainly.

Q. You have testified to the position which in your opinion the person must have had who fired the shot at Eusebio Yuson?

A. Yes, sir.

Q. And the position of the man who fired the shot depends entirely on the position of Yuson when he went up the stairway, does it not?

A. I think not.

156 Q. The position of the person who fired the shot with relation to the position of Yuson depends upon the manner in which Yuson went up the stairway?

A. To a certain extent, sir.

Q. But is it not true that the greater part depends on that?

A. Not so much.

Q. Suppose that this is the stairway, and Eusebio Yuson ascended the stairway looking toward the left, and he saw a man on his left, who fired a shot which caused those wounds made by the small bullets which entered his right side and came out on the right side also?

A. I cannot state in what position Mr. Yuson ascended the stairway.

Q. If he turned his body toward the right he must have been shot from the left, and if he had been shot from the right he must have been hit in the left side, and, therefore, it depends upon the position of Eusebio Yuson when he ascended as well as upon the position of the man who fired the shot, is it not true?

A. The manner in which the bullets entered would depend upon the position of the two, upon his position and that of the man who fired the shot at him.

Q. Have you seen those cartridges and the belt that were on this table of the courtroom yesterday?

A. Yes, sir.

Q. Have you in your possession those cartridges?

A. Yes, sir.

Q. Where did you obtain those cartridges?

A. They came from the house of Francisco Amante.

Q. They came from Francisco Amante, from the house of Francisco Amante?

157 A. They might have been found in his possession at the same time that he delivered the shotgun, but I do not remember clearly.

Q. But your information is that those cartridges belong to him?

A. Yes, sir.

Q. Nothing more.

Fiscal:

Q. You say that you saw the mark of a small bullet or small bullets in the post of the stairway toward the right going up?

A. Yes, sir.

Q. Now, supposing that the murderer was at the place where you suppose he was, and with reference to the mark of that small bullet on that post of the stairway, what must have been the position of the body of Eusebio Yuson?

A. He could have been ascending directly, or he could have been ascending and looking toward the spot which is very near the last step of the stairway, and would turn to the right a little.

Q. In that case you have noticed the place of the stairway where the bullet struck and the spot where the person was who fired the shot; and the direction of the wound would depend upon the position of Eusebio Yuson while ascending the stairway?

A. The manner in which the bullets entered would depend upon his position.

Q. But a man who might have been on the right of the opposite side, where it is supposed the murderer was who fired, might have been wounded also in the right side?

A. It would have been possible.

Q. Nothing more.

The Court: The session of the court is closed until this afternoon.

158

Afternoon Session.

Having again called this case for the continuation of the hearing on the afternoon of this 10th day of July, 1912, before the Hon. Ysidro Paredes, Judge, the same parties appeared.

Evidence of the Prosecution Continued.

E. W. CROCKETT was called again to testify as a witness under the same oath as previously taken in legal form, which is duly recorded in the record. (Mr. Buencamino, interpreter.)

Redirect examination by Prosecuting Attorney:

Q. Have you a record of all the licenses for firearms issued in the province?

A. Yes, sir.

Q. Do you know if Emilio Valdez has a license issued in his name for any firearm such as a rifle or a shotgun?

A. Not for a rifle or a shotgun; but, yes, he has a license for a revolver.

Southworth (recross-examination):

Q. How long has he had that license?

A. I do not know how long he has had that license, but I think he got it last year; I am not very sure of the date.

Q. Have you the data here from which you can tell when that license was issued?

A. No, sir, they are in my office.

Q. Is the record of the issuance of that license in your office?

A. No, sir.

Q. Where is it, in what office?

A. It is in the office of the chief inspector of Constabulary in Medina Street of this province.

159 Southworth: We object to all the testimony given here in regard to that license, as at all times the records of the office are the best evidence. I do not wish to make a technical objection such as this one, but it is very important to know when this license was issued; and we object to any secondary evidence by means of which it cannot be determined when that license was issued; and we ask that that evidence be stricken from the record as incompetent.

Fiscal: This counsel is trying to prove that Emilio Valdez has a license for a firearm; if he does not have it, well, it may be proven by the records.

The Court: In view of the statement of the prosecuting attorney, do you insist upon your objection, Mr. Southworth?

Southworth: The only part of it to which I object is that part that refers to the license for the revolver; in regard to the other part I have no objection, because later it may be argued that that revolver license was issued 3 or 4 days before or after the occurrence (the

murder); that is why we ask that that part of the statement be stricken out.

The Court: Strike from the record that part of the statement referring to Emilio Valdez's having a license to use a revolver; the license is the best evidence.

Chicote (addressing the witness):

Q. Did you give, some time after the issuance of the license to Mr. Francisco Amante, a permit to buy the shotgun?

The Court: This is not a continuation of the testimony of this witness, and the court understood that this witness had been recalled, and therefore Mr. Chicote's question seems to me improper.

Southworth: I wish to ask the witness one more question, your honor.

The Court: Go ahead.

Fiscal: I object, since if the defense utilizes my witness it may utilize him as a witness for the defense.

Southworth: We do not ask that the captain be our witness, and we do not believe that that is necessary either.

The Court: Good, it is permitted, and also I will permit Mr. Chicote to question the witness.

Southworth (to the witness):

Q. Have you visited the location of this murder some time after it occurred, jointly with Gatmaitan or Arcilla or any of them?

A. Never.

Q. Were you at any time at that place of the murder with any one of those two men?

A. Never.

Q. Have you seen at any time any one of those two men there?

A. Never.

Chicote:

Q. After the issuance of the firearms license to Francisco Amante, did you issue to Amante a license to buy cartridges for that shotgun?

A. I do not remember.

Q. That is all.

161 PERFECTA DE GUZMAN was called to testify as a witness under the same oath taken in legal form, the personal circumstances of which appear in the record.

Redirect examination by the Prosecuting Attorney:

Q. You stated that you were one of those who assisted when Eusebio Yuson your husband fell down?

A. Yes, sir,

Q. Tell me in what position you found him, if he fell paralleled with the stairway or how did he fall on the stairway?

A. Supposing that this is the stairway (indicating on the court-

room table) one end of the first step from below to the other end which is the back porch upstairs; there he thus was (indicating that the murdered man was extended diagonally on the stairway, with his head against the next column).

Q. That column against which you found the head of the murdered man was on the edge or on the right of the stairway?

A. Going up it is on the right.

Q. That is all.

Chicote: Will the court permit me to ask the question asked previously of the captain regarding the visit of Gatmaitan or Arcilla, if they went to the house of the murdered man?

Fiscal: I object, because in the direct examination this point was not brought out.

Chicote: Good! I do not insist.

Fiscal: Before continuing, your honor, I should like that 162 you pass upon the notice given the defense that it present here the letter.

Chicote: You may ask the accused, Francisco Amante, regarding that letter. This accused, Francisco Amante, has been questioned by this defense, and he manifested that he had not received said letter mentioned here by the prosecuting attorney.

Fiscal: In that case I am going to present secondary evidence regarding the reason for the writing of that letter, inasmuch as it has been established by the prosecution that there was such a letter.

Ledesma: The existence of the letter has not been proven, therefore we object.

The Court: Objection is overruled. Two witnesses testified here regarding the existence of that letter and relative to the fact of its having been delivered to the person addressed, Francisco Amante, and one of those witnesses has read the contents of the letter.

Chicote: But the contents of the letter have not been given.

The Court: The secondary evidence may be presented.

Ledesma: Exception.

MATEO ARCILLA was recalled to testify as a witness under the same oath previously taken in legal form the personal circumstances of which appear in the record.

(A. Gempezao, interpreter.)

163 Redirect examination by Prosecuting Attorney:

Q. In your previous testimony you stated that you had read a letter directed to Francisco Amante, written by Emilio Valdez, and that it was in the possession of Victor Robaya, did you not?

A. Yes, sir, it is true.

Q. What was stated in that letter?

A. It was stated in that letter: "Quico: bring the shotgun, because I need it badly."

Q. Was there anything else in the letter?

A. Yes, sir.

Q. What else?

A. To not let anyone see it.

Q. By whom was the letter signed?

A. By Emilio Valdez.

Q. That is all.

Chicote (recross-examination):

Q. Where did you read that letter?

A. In the roadway near Santo Cristo.

Q. That letter fell from Robaya's pocket when he was searching for a package of cigarettes, did it not?

A. Yes, sir.

Q. He continued on his way, and did not notice that the letter had fallen, and then you stooped down and picked up the letter, is it not true?

A. No, sir.

Q. How did it occur?

A. When the letter fell out he picked it up.

Q. And then you asked him to permit you to see that letter?

A. I asked him what is it that had been given to him by our principal, and he replied that it was a letter.

164 Q. And afterwards you asked him for the letter to read it?

A. Yes, sir.

Q. And he then turned to pick up that letter, and delivered it to you?

A. Yes, sir, he picked up the letter and delivered it to me.

Q. That was about 10 a. m.?

A. It was not 10 a. m.

Q. And what hour was it then?

A. Saturday night.

Q. What hour of the night?

A. It was so long after the hour of evening prayer that in order to read it we had to make a light.

Q. But, of course, when you read the letter it was a long time before midnight?

A. Yes, sir, a long time Before midnight.

Q. You have relatives here in Nueva Ecija?

A. Yes, sir.

Q. During the time that you have been detained have you received a letter from your relatives or from any one of your family?

Prosecuting Attorney: I object to the question because it is not proper on recross-examination.

The Court: The witness may answer.

A. No, sir.

Chicote: Before you made a deposition before the justice of the peace of Gapán, that is before you swore to the truthfulness of the deposition, did you read your statement?

165 Prosecuting Attorney: I object, in the first place because it is immaterial, and in the second place it is not a proper question on recross-examination.

The Court: Objection sustained.

Chicote: Exception.

Chicote:

Q. Arcilla, do you remember all you have read from March to to-day?

A. In the letter which I have read?

Q. Of course, and in any other letter or in any other periodical that you might have read?

A. I have not read periodicals (newspapers) with the exception of that letter.

Q. Have you voted in the last elections?

A. I have not voted.

Q. Did you read the announcements of the last voting?

Prosecuting Attorney: I object as being immaterial and improper on recross-examination.

The Court: Objection sustained.

Chicote: Exception.

Chicote (continued):

Q. Before the month of March or on any other date previously to that month, have you read anything that was written?

A. I have read nothing.

166 Q. You do not remember having read anything beyond that letter?

A. I have read nothing, with the exception of that letter.

Q. During your whole life has that been true?

A. I have read short stories.

Q. Can you recite from any letter or writing that you have read?

A. I do not remember.

Q. Can you tell us any part of the contents of any letter from those that you might have read with the exception of this one or in addition to this one?

A. Yes, sir, if I should start to read those short stories I would be able to say.

Q. If I should at this moment give you something to read can you repeat it afterwards from memory?

A. I believe I would not be able to do it all from memory; that which I would remember I would repeat.

Q. I place before you this paper marked Exhibit X, a manuscript, in order that you may read it (the witness reads the paper).

A. I cannot read the last word because I do not read very well the letters.

Q. The day that you read the letter to which you have referred as having been delivered to you by Robaya, who lighted the match, you yourself or Robaya?

A. I myself had lighted the match and read the letter, match by match, because I do not read very well.

Q. How many matches did you use in reading that letter?

A. I suppose 2 or 3 because I do not read very rapidly.

Q. Is it not true that that night there was a moon?

A. There was no moon.

167 Q. The reading occurred while you and he were very close to the house of the deceased where you went or were going?

A. No, sir; it was near the bridge of Cababao, toward Santo Cristo.

Q. Now, can you repeat to us that which I have given you to read, written on this paper marked Exhibit X?

A. Because I read that letter many times, and if I should read that another time I believe I would be able to do it.

Q. How many times have you read that letter?

A. Only once, but due to the fact that I do not read rapidly I was delayed a little, so much so that I consumed 3 matches.

Q. If I should give you to read this paper again, would you be able to repeat to us again its contents?

A. I would be able to read it, but I do not know if I will be able to retain its contents in my memory.

Q. Repeat the answer?

A. I shall repeat it.

Q. If you read it?

A. Yes, sir.

Q. Arcilla, read again the contents of this manuscript, marked Exhibit X.

Prosecuting Attorney: I object because this manuscript is longer than the one he read formerly. But I withdraw my objection. (Mr. Chicote hands the paper to the witness.)

A. I cannot *certain* in my memory this (indicating the paper which had been presented to him), but I remember the other one in view of the short phrases written there, saying "Quico, deliver the shotgun."

Chicote: I ask the court that this paper, marked Exhibit 168 X, be made a part of the record, forming a part of the testimony of the witness on recross-examination, in order that it may be known at all events to which paper and to which manuscript this witness refers.

Prosecuting Attorney: I object because it is incompetent, since the witness did not then find himself in the same circumstances in which he finds himself now, because now the witness is only in a courtroom.

The Court: It is ordered made a part of the testimony. The court will take into consideration the rights of the prosecuting attorney.

Ledesma (continued)*.

Q. Was that letter written with a pencil?

A. Yes, sir, with a pencil.

Q. But it was so dark that night that you needed to light a match, was it not?

A. It was dark.

Q. You were able to see the buttons on the shirt of Victor Robaya that night without lighting a match?

A. Yes, I was able to do so, by looking carefully, I think so.

Q. The paper was blue or pink?

A. White.

Q. And the penmanship, how was it, straight up and down, inclined to the right or to the left?

A. I cannot remember if the writing was inclined or straight; I cannot determine with certainty.

Prosecuting Attorney:

Q. Was any name signed to the letter?

169 A. Yes, sir.

Q. Whose name was it?

A. Emilio Valdez.

Q. And who caused you to look at that letter?

Chicote: I object because it is suggestive; it seems that the witness himself looked at it, it being supposed that he did nothing more than look at it.

Prosecuting Attorney: I withdraw the question.

Q. What caused you to remember the contents of that letter?

A. On account of the occurrence, and on account of the fact that the Constabulary was asking me for that letter as soon as I stated to him that it is certain that I had read it.

Q. That day do you remember having received any message from Emilio Valdez?

A. Yes, sir.

Q. What was the order?

Miranda: Your honor, the prosecuting attorney is now trying to cross-examine the witness, and therefore we object because it is a cross-examination of his own witness.

The Court: The witness may answer.

Miranda: Exception.

Chicote: We object to any statement of this witness made to a brother.

The Court (to Mr. Chicote): Let his answer be translated
170 first.

The Witness: On the occasion when I was looking after the child which was conducted to the cemetery—(interruption).

The Court: Answer the question.

Witness: I was digging the grave in the cemetery.

The Court: No, answer the question presented to you.

Witness: My brother was instructed to see that I returned to his house.

Miranda: I ask that the answer of the witness be stricken from the record for not being an answer to the question.

The Court (to the witness): Let us see, answer again, speaking clearly.

Witness: That is it, that Emilio Valdez charged my brother to see that I retired to his house, to the house of Valdez.

Miranda: That is not an answer to the question, and, further, it involves hearsay evidence.

Prosecuting Attorney: That is all.

Statement of Florentino Garcia.

This witness being legally sworn stated his name is FLORENTINO GARCÍA, 40 years of age, married, land owner and resident of Gapán, Nueva Ecija, P. I. (A. Gempezao, interpreter.)

171 Direct examination by Prosecuting Attorney:

Q. Do you know Emilio Valdez?

A. Yes, sir.

Q. Do you also know one Eusebio Yuson?

A. Yes, sir.

Q. Do you know what has occurred to Eusebio Yuson?

A. Yes, sir.

Q. What has occurred to him?

A. It is said by people that he was shot; I say it is so stated, because I was in Cabanatuan.

Miranda: In regard to the last part of the statement, we object: and ask that it be stricken from the record.

The Court: Objection overruled.

Prosecuting Attorney (continuing):

Q. Do you know what relations existed between Emilio Valdez and the deceased, Eusebio Yuson?

A. Yes, sir.

Q. What relations did they have?

A. Due to the fact that I was going frequently with the deceased, Eusebio Yuson, as much in Gapán as in other locations, I have observed that when they met they never spoke to each other.

Q. Do you know what motive existed for their not speaking to each other?

A. That which I know is that since that occasion when they had a lawsuit regarding lands.

172 Q. Before that occasion in which they had a dispute what were the relations between Emilio Valdez and Eusebio Yuson?

A. I noticed that sometimes Emilio Valdez visited the house of Eusebio Yuson.

Q. Nothing more.

Chicote (recross-examination):

Q. When did that affair regarding land occur, to which you refer?

A. According as I remember, about 4 years ago.

Q. Is it not true that it was an affair that occurred in the court?

A. Yes, sir, I believe that it was taken to court.

Q. Do you know how the affair terminated between them?

A. I do not remember.

Q. How many times have you gone with Eusebio Yuson, and you and he have met Emilio Valdez, or you and Yuson have met Francisco Amante?

A. Neither do I remember, neither can I determine how many times.

Q. When did those meetings occur? Is it not true that he was there in the seed-field?

A. No, sir, not in the seed-field, but sometimes in our town and sometimes in other towns.

Q. Your brother-in-law, Eusebio Yuson, told you that he was an enemy of Emilio Valdez?

A. He has not told me so directly, but once Eusebio Yuson has referred me to the occasion of the litigation, because these people believe he committed a bad act here in connection with the land.

Q. And after that time and those conversations he did not again talk about it?

173 A. I do not remember now if he had talked with me again.

Q. When that conversation occurred do you remember if the affair was already in the court, or not?

A. Neither do I remember if it was already in the court or not.

Q. That is all.

Declaration of Rufino Alacon.

This witness being duly sworn stated his name is RUFINO ALACON, 30 years of age, married, and a resident of the municipality of Gapán, Nueva Ecija, P. I. (A. Gempezao, interpreter.)

Direct examination by Prosecuting Attorney:

Q. What was the relation between you and Eusebio Yuson?

A. He was my principal.

Q. Do you know Emilio Valdez?

A. Yes, sir, I know him.

Q. Do you know him personally?

A. Yes, sir.

Q. Where is he?

A. He is there (indicating the accused, Emilio Valdez).

Q. Do you know Francisco Amante?

A. Yes, sir I also know him.

Q. Where is he?

A. He is there (indicating the accused himself, Francisco Amante.)

Q. Do you know if the deceased Eusebio Yuson and Emilio Valdez had any discussion?

A. No, sir.

174 Q. Do you know the irrigation canal of Eusebio Yuson?

A. I know it.

Q. Do you know if there was any dispute regarding that canal?

Ledesma: I object to the question because it is suggestive?

The Court: The witness may answer.

A. Over the canal that we have constructed.

Prosecuting Attorney (continuing):

- Q. What occurred regarding that canal?
 A. We have constructed that canal.
 Q. Whom do you mean by "we?"
 A. Luis and my other companions who are his tenants.
 Q. Who ordered you to construct that canal?
 A. Head man Sebio.
 Q. And what occurred after the construction of the canal?
 A. After constructing that canal it was closed within 2 days.
 Q. Who closed it?
 A. I did not see who closed it.
 Q. And what did you do upon seeing the canal was closed?
 A. I opened it.
 Q. And does it continue open until now?
 A. Yes, sir, I have opened it.
 Q. And what occurred when you opened it?
 A. After opening it I returned to my home.
 Q. And afterwards what did you do?
 A. I informed foreman Sebio that the canal was closed.
 Q. And what did foreman Sebio do?
 A. He said nothing.
 Q. But what did he do?
 175 A. In the afternoon we saw 4 men on the railroad track
 in front of our canal, and our principal Eusebio ordered us
 to take no notice of them.
 Q. Who were those persons there on the railroad track?
 A. Quinco and Emilio.
 Q. And the other two?
 A. Their tenants.
 Q. And what occurred there then?
 A. They were closing the canal again.
 Q. And what occurred afterwards?
 A. When they were closing the canal I said nothing, and I went
 to give an account of their action to Eusebio, telling him that they
 were closing the canal.
 Q. And what did Eusebio do?
 A. After I told him, we went there, Luis and I, with Eusebio our
 principal.
 Q. And what occurred when you arrived there?
 A. When we arrived there our principal Eusebio asked them why
 they were closing the canal when it was not their property.
 Q. And which ones of them answered or what did they say?
 A. Quico answered that they had leased that canal.
 Q. What reply did Eusebio Yuson make?
 A. Our principal Eusebio said that if they insisted upon closing
 it we would have a lawsuit. ("litigio" means lawsuit or dispute; trans-
 lator is unable to say which word is meant.)
 Q. And what reply did Emilio and Quico make?
 A. He ordered the canal to be opened.
 Q. Who ordered it opened?
 A. One of their tenants.

Q. And what did principal Eusebio do when the canal was opened again?

176 A. After it was opened, principal Eusebio went away.

Q. And what did you do?

A. After principal Eusebio had gone, and as they believed he would not hear them, Emilio asked his brother-in-law Quico to leave, saying "Quica, we shall leave, and at another time our day will come."

Q. Do you know if the others carried any weapon or what?

A. I did not see anything.

Chicote (cross-examination):

Q. When did all that occur that you have related?

A. This is the third rainy season (rainy season comes yearly.)

Q. Is that canal to which you refer still in use, or is it being used yet?

A. Not now.

Q. That canal was taking the water from the side culbert of the railroad was it not?

A. Yes, sir.

Q. Nothing more.

Statement of Braulia Arcilla.

This witness, being duly sworn, stated her name is BRAULIA ARCILLA, 30 years of age, married a shopkeeper, and a resident of Santo Cristo, Gapán, Neuva Ecija, P. I. (A. Gempezao, interpreter.)

Direct examination by Prosecuting Attorney:

Q. Do you know Emilio Valdez?

A. Yes, sir.

Q. Where is he?

A. He is there (indicating the accused Emilio Valdez.)

177 Q. Have you been called at any time by Emilio Valdez?

A. Yes, sir.

Q. When?

A. Three times.

Q. Who called you?

A. Mariano Suniga.

Q. Who is that Mariano Súniga?

A. His employee.

Q. Whose?

A. Emilio Valdez.

Q. What did Mariano Suniga say to you when he called you?

A. That Emilio Valdez was ordering me to go.

Q. And what did you do?

A. I was ordered to go to Cabanatuan.

Q. Who ordered you to go to Cabanatuan?

A. As yet I have not gone.

Q. Did you go to the house of Emilio Valdez?

A. I went to make purchases in the market in order to gain my living.

Q. And when you went to the market did anyone there call you?

A. Yes, sir.

Q. Who called you?

A. Mariano Súniga.

Q. What did you do?

A. I followed him.

Q. Where did he take you?

A. To the house of Emilio Valdez.

Q. Did you see Emilio Valdez there in his house?

A. Yes, sir.

Q. Did Emilio Valdez talk with you?

A. Yes, sir.

Q. What did he say to you?

178 A. He was asking about my brother; how he was.

Q. What reply did you make?

A. He was well, thanks be to God; only that he could not talk.

Q. And what did Emilio Valdez afterwards say to you?

A. He told me that as my brother was sick I should make a statement before a lawyer; but I told him that I could not do so because I am a poor woman.

Q. And did he say to you who would pay the expenses of a lawyer?

A. Yes, sir.

Q. Who.

A. As he stated, he himself, because I told him I am a poor woman who has no resources.

Q. Did Emilio Valdez say to you that you were to visit your brother?

A. Yes, sir.

Q. Did he also say to you what you should say to your brother?

A. Yes, sir.

Q. What did he say to you?

A. That if I should succeed in talking with my brother I should say that it was of no importance that he confess himself guilty, and he would be able to reform his statement or change his statement, at once.

Q. What did you reply?

A. I told him I could not do so.

Q. Did he say anything else to you?

A. Nothing more.

Q. Did he tell you who would assume your expense in going to Cabanatuan?

A. I have already said that he stated he would look out for them.

Q. And who is that brother to whom you refer?

179 A. Mateo Arcilla.

Q. How many months or weeks have passed since you had that conversation with Emilio Valdez?

A. I do not remember the month due to my little knowledge.

Q. And after that conversation what did you do?

A. Mariano Súniga said it would be useful to send a letter to show to Mateo what he should say in his statement (deposition), but Emilio said that would not be advantageous because it might prejudice himself.

Q. And after that conversation where did you go?

A. I then left.

Q. Did you meet anyone when you left?

A. No, except when I was a short distance away.

Q. Whom did you meet?

A. Paulino Avelino who followed me in the road.

Q. And did that Avelino ask you anything?

A. Yes, sir.

Q. What did he ask you?

Ledesma:

I object because the question is irrelevant.

The Court:

The witness may answer.

A. He told me when I was being called in the mercado (market) he had noticed me, but that he could not approach me.

Q. And what did he ask you?

Ladesma:

We continue to object to the question as irrelevant.

The Court:

The witness may answer.

A. What he asked me is what I have already stated.

Prosecuting Attorney (continuing):

Q. Do you know when a grandchild of yours died?

180 A. Yes, sir.

Q. When?

A. Friday afternoon.

Q. Do you know when she was buried?

A. Yes, sir.

Q. When?

A. It was a Saturday.

Q. Saturday, at what hour?

A. In the afternoon.

Q. Were you in the house of the deceased?

A. Yes, sir.

Q. Did you see Victor Robaya there?

A. Yes, sir.

Q. And Mateo Arcilla?

A. Yes, sir.

What did those two do there?

A. When they came from the burial they returned to the house to eat, which is the custom in houses of deceased persons.

Q. Do you remember, approximately, at what hour they went here to eat?

A. According to my calculation it was after 8 o'clock?

Q. How long were they there?

A. Upon arriving they prepared the meal and when prepared they ate it, and after eating they departed, because that is the custom, as much as the house is small.

Q. Do you know who departed first, Victor Robaya or Mateo Arcilla?

A. I know.

Q. Who left first?

A. Victor Robaya left first.

Q. That is all.

181 Chicote (cross-examination):

Q. When did that conversation take place between you and Emilio? Who were present?

A. Mariano Súniga.

Q. Anyone else?

A. We three only.

Q. Where did the conversation occur?

A. At an angle of the house, or, better stated, at a corner.

Q. What corner?

A. At a corner towards the right coming from the kitchen.

Q. Were there no other persons in the house except you, Emilio, and Súniga.

A. There were, but they were outside.

Q. That is all.

Prosecuting Attorney: The Government closes its evidence.

Ledesma: We ask that the case with respect to the accused Francisco Amante be dismissed, because there is no material or relevant evidence against him.

Prosecuting Attorney: I object to the motion of the defense, because it has been proven here that Emilio Valdez gave a letter to Victor Robaya to be delivered to Francisco Amante, and in that letter he asked that he bring the shotgun, with the warning that said letter must not be delivered to any other person. In obedience to that letter the said Francisco Amante took the shotgun to Emilio Valdez, it having been hitherto proven that that shotgun was used in causing the death of Eusebio Yuson, and that the same was delivered by Emilio Valdez to Juan Gatmaitan. It has been

182 proven that Emilio Valdez had no license for a shotgun, and therefore the shotgun that Francisco Amante had carried must have been, without doubt, the one here exhibited, whose owner is the same Francisco Amante. This accused had a shotgun license and for this reason thought he had a right to take the shotgun to the person who had asked him for it as has been proven.

The Court: I wish that you two would discuss fully the point. (The lawyers on both sides then discussed the point in question).

Southworth: We will withdraw for the time being the motion requesting dismissal.

The Court: Good, the defense may produce its evidence.

Evidence of the Defense.

Testimony of Sor. Efigenia Alvarez.

This witness, being duly sworn, stated her name is Sor. EFIGENIA ALVEREZ, 54 years of age, mother superior of the Convent of the Company of Jesus, and a resident of Manila, P. I.

Direct examination.

Mr. Miranda:

Q. To what religious society do you belong?

A. To the Convent of the Company of Jesus.

Q. I hand you this document marked Exhibit 1 of the defense state if you know what it is. (Handing the document to the witness).

A. Yes, sir, I know it.

183 Q. What document is this?

A. It is a receipt for a telescope suit-case containing the clothing of Mariquita.

Q. Is it your signature that appears in this document, Exhibit 1?

A. Yes, sir, it is mine.

Q. From whom did you receive the suit-case of clothing?

A. From this Francisco Amante (pointing to the accused, Francisco Amante).

Q. On what date did you issue this document?

A. On the same date stated therein, March 17th.

Q. To whom did you deliver this document?

A. To him personally.

Q. At what hour of that day?

A. After 4 o'clock, from 4 to 5.

Q. In the afternoon?

A. Yes, sir.

Q. Who is this Maria Valdez whose suit-case you received?

A. She is from Gapán, sister of Mr. Emilio Valdez.

Q. Where did you issue this receipt?

A. In the Convent of the Society, in my office.

Q. In Manila?

A. Yes, sir.

Q. Do you know personally Francisco Amante?

A. Yes, sir.

Q. Is he here present?

A. Yes, sir, he is here.

Q. Point out who he is?

A. He is the man who is to the right of Mr. Emilio Valdez (Indicating the accused, Francisco Amante).

Q. That is all.

Prosecuting Attorney: Nothing more.

184 Miranda: We present this document, Exhibit 1, as a part of the testimony of Sor. Efigenia Álvarez.

The Court: It is admitted as a part of the testimony of Sor. Efigenia.

Testimony of Go-Ping, a Chinaman.

This witness, being duly sworn, stated his name is Go-PING, 32 years of age, a bachelor, a merchant, and a resident of Manila, P. I. (A. Gempezao, interpreter).

The Court (addressing the witness): Can you give your testimony in Tagalog?

A. Yes, sir.

Miranda (direct examination):

Q. I show you this document, Exhibit 2, and ask you if you recognize it? (handing the document to the witness).

A. I recognize it.

Q. What document is this?

A. A merchandise invoice.

Q. By whom was that invoice issued?

A. The signature is that of the agent of the store?

Q. What store?

A. That sells flour and other articles.

Q. Is it your tienda? (store).

A. No, sir.

Q. Who is the owner of the store?

A. Go-Bomping.

Q. What position do you have in that store?

A. Employee.

Q. What kind of employment do you have in that store?

185 A. I am a clerk.

Q. Do you recognize the signature that appears in that document or in this invoice?

A. Yes, sir.

Q. Do you recognize this invoice as an invoice of the establishment where you work?

A. Yes, sir.

Q. Did you see this document on the date it bears?

A. Yes, sir.

Q. Who made this invoice??

A. The agent.

Q. Did you see him making that invoice?

A. Yes, sir.

Q. To whom was that invoice delivered?

A. To Francisco Amante.

Q. When was this invoice delivered to Francisco Amante?

A. The invoice was delivered to him on the 18th.

Q. Where was this invoice delivered on the 18th to Francisco Amante?

A. In the store.

Q. In Manila?

A. Yes, sir, in Manila.

Q. At what hour on the 18th?

A. After 10 o'clock.

Q. Do you know Francisco Amante?

A. Yes, sir.

Q. How long have you known him?

A. I have known him approximately one year, but he who has known him a long time is Go-Bumping, the owner.

Q. Is Francisco Amante here now?

A. Yes, sir, he is there (pointing out the accused, Francisco Amante).

Q. Why was this invoice given to Francisco Amante?

186 A. Because he had paid, and upon making that payment he was given this invoice.

Q. When did he make the payment?

A. He arrived there on the 17th, and paid on the same day, March 17th.

Q. He paid all the amount of the invoice on March 17th?

A. That which he had paid is P200.00.

Q. Where did Francisco Amante make the delivery of that P200?

A. I the store.

Q. At what hour, about?

A. A little after 2.

Q. In the afternoon?

A. Yes, sir.

Q. At what hour did he arrive there at your tienda on the 17th of March?

A. A little after 2.

Q. You have said that you are a clerk, and therefore you are in charge of the books of accountability of the store. Have you made any entry in your book of accountability of the sum paid by Francisco Amante?

A. Yes, sir.

Q. Can you demonstrate it?

A. Yes, sir (witness demonstrates to the court the entry made by him in the account-book).

Q. Show the entries that you have made by reason of this operation which proves that the invoice of March 17th is Exhibit 2.

A. Here it is (witness reads from page 37 of the book).

Q. What book is that?

A. The Chinaman's book.

Q. But what book is it, the ledger or what?

A. It is the ledger.

187 Q. In that ledger that you have open and where you say appears the entry covering this factura (invoice) what is the number of the page?

A. 37 (indicating a small Chinese mark), and this is the name (indicating the last page of the book where also Chinese letters appear).

Q. When were entries started in that book?

A. In January.

Q. What year?

A. This year.

Q. In that other small book is there also an entry referring to this invoice?

A. Yes, sir, here it is (showing the court one of the pages where there appear also Chinese characters).

Q. What libro is that? (What book is that?.)

A. It is a book showing merchandise shipped out.

Q. What page is that where the entry is verified?

A. It has no number, but it bears a date.

Q. On what date was that entry made?

A. It is dated March 18, 1912, in the book, in ordinary figures or writing. (Witness means not in Chinese.)

Q. On that date did the merchandise leave your tienda?

A. Yes, sir.

Q. And where did it go?

A. To the station.

Q. What station?

A. Manila station.

Q. What kind of a station?

A. To be checked at the station.

Q. The railroad station?

A. Yes, sir.

188 Q. At what hour did Francisco Amante leave your store on March 18th?

A. After 11 o'clock.

Q. Do you know where he slept on the night of the 17th, Sunday?

A. In our house.

Miranda: I ask, also, that this Exhibit 2 be included as a part of the testimony of this witness.

The Court: It is ordered that exhibit 2 be included as a part of the testimony of this witness.

Prosecuting Attorney: No cross-examination.

(On petition of both parties the session of the court was terminated until to-morrow morning.)

Session of Court on July 11, 1912.

Having called again this case on the morning of this 11th day of July, 1912, for a continuation of the hearing before the Hon. Ysidro Paredes, Judge, the same parties appeared.

Mr. Chicote: We offer in evidence on the part of the defense the arraignment of the first information before the justice of the peace of Gapán. The arraignment is that the accused, Juan Gat-maitan, Mateo Arcilla and Lucas Figueroa pleaded guilty of the crime alleged in the complaint to which reference is made in this proceeding. We offer, also, in evidence the sworn statements made

by Juan Gatmaitan and Lucas Figueroa before the justice of
189 the peace of Gapán, Mr. Ludovico Morales, calling attention
to the fact that Lucas Figueroa has made two sworn statements
dated May 25th and May 28th, respectively; and we wish also that
the complaint be made a part of the proceedings.

The Court: Yes, you may mark it with another number, that is
to say, the complaint as Exhibit 3; the proceedings as Exhibit 4;
the statement of Lucas Figueroa, the first affidavit, as Exhibit 5; and
the second affidavit of the same Figueroa as Exhibit 6; and the sworn
statement of Juan Gatmaitan as Exhibit 7.

The Court (to the prosecuting attorney): Have you any objection?

Prosecuting Attorney: No objection.

The Court: Said exhibits are ordered admitted in evidence.

Chicote: We offer also as Exhibit 8 a complaint for the crime of
theft against Gatmaitan, in which case he was condemned.

Prosecuting Attorney: We should like to know the object in presenting this evidence.

Chicote: This is case No. 1986, and we offer only the complaint
and the sentence as evidence, with the object of showing what the
antecedents of Juan Gatmaitan are.

The Court: The complaint may be marked Exhibit 8, and the
decision Exhibit 9.

190 Prosecuting Attorney: I object to the admission of this
case.

The Court: I sustain the objection from the viewpoint that we do
not know if that case refers to the witness Juan Gatmaitan.

Chicote: Good.

Continuation of Evidence of Defense.

Statement of Leonico Domingo.

This witness, being first duly sworn, stated his name is LEONICIO DOMINGO, 20 years of age, married, a laborer, and resident of Santo Cristo, municipality of Gapán, Neuva Ecija Province, P. I. (A. Gempezao, interpreter.)

Direct examination by Mr. Miranda:

Q. Do you know Mateo Arcilla?

A. Yes, sir.

Q. How do you happen to know him?

A. He is our neighbor.

Q. State if you and Mateo Arcilla have ever lived together in the same house?

A. Yes, sir.

Q. How long?

A. I cannot determine how long.

Q. Many months?

A. Not so many.

Q. Do you know lieutenant Eusebio Yuson?

A. Yes, sir.

Q. Do you know if he is living or has died?

A. He is dead.

191 Q. Do you know what caused his death?

A. According to what I have heard he was killed.

Q. What caused his death?

A. It is said he was shot.

Prosecuting Attorney: I ask that this answer be stricken from the record as hearsay evidence.

The Court (to prosecuting attorney): If it coincides with your evidence, why should it be stricken from the record? Continue, Mr. Miranda.

Miranda (continuing):

Q. How did you happen to receive information of that fact?

A. On a Monday we were looking for sugarcane seed and at the siesta (about lunchtime) hour we went to the warehouse to take a nap.

Q. Who is it that went with you?

A. Mateo Arcilla.

Q. And on that occasion was when you heard the news?

A. After the nap we went toward the road, and there we heard from the people who were coming from the town that Eusebio Yuson had been killed.

Q. Were you with Mateo Arcilla when you heard that news?

A. Yes, sir.

Q. And what did he say.

A. Nothing.

Q. On that day when you heard the news where was Mateo Arcilla living?

A. In our house.

Q. Do you know where Mateo Arcilla passed the preceding day, Sunday?

A. Yes, sir.

Q. State where he was.

A. In our house.

Q. What did he do there?

192 A. Nothing during the morning, but at the luncheon hour he was making a basket.

Q. Did Mateo Arcilla take breakfast there?

A. Yes, sir.

Q. Did Mateo Arcilla take luncheon there?

A. Yes, sir.

Q. During the morning did Mateo Arcilla remain there or did he leave the house?

A. He did not leave.

Q. And during the afternoon you say that after the siesta (nap) he was working on a basket; how long was he thus engaged?

A. A moment only.

Q. And after that what did he do?

A. Due to the fact that he spoiled the basket he took a nap on the pile of shavings gathered together from the wreck of the basket.

Q. And until what hour was he thus resting?

A. I cannot state exactly the hour, but it was approximately about the siesta (nap) hour.

Q. And at night where was Mateo Arcilla?

A. On Sunday?

Q. Yes.

A. In our house.

Q. Where did Mateo Arcilla take supper?

A. Also in our house.

Q. At what hour?

A. We ate supper when the night train was passing.

Q. The Saturday before that Sunday do you know where Mateo Arcilla was?

A. I know.

193 Q. Where was he?

A. In our house.

Q. Do you remember if on that date there was a burial of a little child?

A. I know.

Q. Why do you know?

A. Because during the morning, after breakfast, we went to the roadway in order to go to the house of the deceased.

Q. Who went with you to the house of the deceased?

A. Mateo Arcilla.

Q. And how long were you two in the house of the deceased?

A. I cannot determine how long.

Q. Did you and Mateo Arcilla return to your house for lunch-eon?

A. After taking a nap in the house of the deceased we returned to our house.

Q. After that what did Mateo Arcilla do? Did he leave your house.

A. Yes, sir; he visited a little while and then left.

Q. Do you know where he intended to go and where he did go?

A. Yes, sir.

Q. Where?

A. To the funeral.

Q. At what hour did he return from that funeral?

A. I think it was in the early hours of the night.

Q. Were you awake or sleeping in your house when Mateo Arcilla arrived that night?

A. I was awake.

Q. What were you doing?

A. My wife and I were playing cards when he arrived.

Q. You and your wife had already had supper when he arrived?

194 A. Yes, sir.

Q. Was it very long after you and your wife had had supper when he arrived or a short time after supper?

A. Shortly after we had had supper.

Q. But did Mateo Arcilla take dinner (supper) there?

A. No, sir.

Q. That is all.

Prosecuting Attorney (cross-examination):

Q. You are a good christian are you not?

Miranda: The question is immaterial, but he may continue.

Prosecuting Attorney (continuing):

Q. What is your religion, or to what church do you belong?

A. I go to mass at the church in Gapán.

Q. Do you go to mass every day in the week?

A. Sometimes I go to mass, and sometimes I do not.

Q. Mateo Arcilla also goes to mass, does he not, on Sunday?

A. Yes, sir.

Q. Does he always go to mass?

A. Sometimes he does not go to mass, but sometimes he does.

Q. On what occasion did he not go, and on what occasion did he go to mass?

A. I do not remember when he has gone to mass, and when he has not gone to mass.

Q. On that Sunday to which you refer is it not true that you went to mass?

A. No.

Q. Is it not true that on that day Mateo Arcilla went to mass very early?

A. He did not go to mass.

Q. What did you do all day Sunday, the day to which you refer?

195 A. I was in my house.

Q. Did you not leave your house for even a moment?

A. I went out when I had to catch the carabaos (water buffaloes.)

Q. And where were your carabaos?

A. In the planted sugar-cane land near our house.

Q. Is it not true that on Sundays you go to the house of your employer for money?

A. It is true, but on that Sunday we did not go to the house of our employer.

Q. Who is your employer?

A. Andrea.

Q. Andrea who?

A. Reyes.

Q. Mother of Emilio Valdez?

A. Yes, sir.

Q. You are now a tenant of that Andrea Reyes?

A. Yes, sir.

Q. And Mateo Arcilla was also a tenant of Andrea Reyes was he not, at that time?

A. Yes, sir.

Q. On that Sunday how long were you absent from your house?

A. Only a moment.

Q. How long?

A. I do not know how long.

Q. On that Sunday was Mateo Arcilla in your house all day?

A. Yes, sir.

Q. He did not leave the house?

A. After the noon nap he left for a moment, and I do not know where he had gone, but he returned at once.

196 Q. At what hour did he return?

A. I do not know the hour.

Q. Did he return to take supper there?

A. He left early and for a moment.

Q. Is it not true that Mateo Arcilla went out to see his employer on that day to ask for money?

A. He did not leave there?

Q. And the previous Sunday to that Sunday, where was Mateo Arcilla?

A. I do not remember where he was.

Q. And the Sunday following the Sunday on which you say that Mateo Arcilla was in your house all day, where was Mateo Arcilla?

A. Neither do I remember.

Q. And the Tuesday following the Sunday in question where was Mateo Arcilla?

A. We were gathering sugarcane seed.

Q. Where did you go to gather the sugarcane seed?

A. On the plantation of our employer.

Q. Did you and he do that all day Tuesday?

A. I do not remember if I was thus engaged all day.

Q. Where was Mateo Arcilla on the afternoon of that Tuesday.

A. I do not remember now.

Q. And on Wednesday where was Mateo Arcilla?

A. In our house.

Q. What did he do?

A. Nothing.

Q. During all the day he did nothing there in your house?

A. During all that day I do not know if he did anything.

Q. Did you see him inside the house?

A. Sometimes went out, and sometimes did not go out (it is impossible to state from the language of the answer if the witness refers to himself or to Mateo Arcilla.)

197 Q. And on Friday, before Sunday, where was Mateo Arcilla?

A. I do not remember.

Q. And on the Friday following the Sunday in question where was Mateo Arcilla?

A. I do not remember.

Q. What persons were in your house last Sunday?

A. I do not remember.

Q. Were you in your house yesterday?

A. No sir.

Q. And where were you day before yesterday?

A. We returned to the town.

Q. Were you in your house day before yesterday?

A. No, sir.

Q. Were you in your house last Monday?

A. Yes, sir, I was.

Q. What persons were in your house on that day?

A. I do not remember.

Q. Do you know what day this is, what day of the week?

A. Yes, sir.

Q. What day is it?

A. Thursday.

Q. On that Sunday to which you refer what hour did you arise?

A. Very early.

Q. And upon arising did you perform your ordinary work?

A. After arising I untied our carabaos.

Q. You drove them to the pasture did you not?

A. After arising I did nothing more than to untie the carabaos.

Q. When you awoke on that Sunday what persons were in your house?

A. My wife and I.

198 Q. Who was in your house during that Sunday?

A. I, my wife, our daughter, and Mateo Arcilla.

Q. Who took lunch with you that Sunday in your house?

A. Mateo Arcilla.

Q. Only Mateo Arcilla?

A. I, my wife, and our daughter.

Miranda:

Q. Why do you remember that on that Sunday Mateo Arcilla was there?

Buencamino: I object to the question as an indirect one.

The Court: You may answer.

A. For the reason that on the preceding day, Saturday, he had gone to the burial.

Miranda (continuing):

Q. Were you related to the corpse that was buried the preceding Saturday?

A. No, sir, no relationship.

— Who are the parents of the little child that died?

A. The mother's name is Juana.

Q. What relation are you to that Juana?

A. She is my sister-in-law, because her first husband was my kinsman.

Q. That is all.

Prosecuting Attorney:

Q. Do you remember on what day Mateo Arcilla was captured?

A. I do not remember that day.

Q. Were you there when Mateo Arcilla was arrested?

A. Yes, sir, I was there.

Q. Do you know when your employer, Emilio Valdez, was arrested?

199 A. No, sir.

Q. Do you remember the day?

A. No, sir.

Q. Did you know that Francisco Amante and Emilio Valdez were arrested?

A. Yes, sir.

Q. You knew that on the very day of their arrest, did you not?

A. Not on that day.

Q. When you people, the tenants of Emilio Valdez, saw his arrest, there was much discussion was there not?

A. We only from our house were discussing it.

Q. Who was in your house when you people were discussing that event?

A. We, I and my wife.

Q. There was no one else there?

A. No, sir.

Q. When Mateo Arcilla was arrested who was in your house?

A. We, I and my wife.

Q. No one else?

A. No one else.

Miranda:

Q. Where did Mateo Arcilla live when he was arrested?

A. In a neighboring house to ours.

Q. He no longer lived in your house?

A. No.

Q. That is all.

Statement of Engracio Nolasco.

This witness, being first duly sworn, stated his name is ENGRACIO NOLAZCO, 60 years of age, widower, a laborer, and a resident of Santo Cristo, Gapán, Nueva Ecija, P. I. (A. Gempezao, interpreter.)

200 Direct examination by Mr. Miranda:

Q. Do you know Eusebio Yuson?

A. Yes, sir.

Q. Are you related to Eusebio Yuson?

A. Consuegro (definition: the fathers or mothers who marry their children together.)

Q. State what you mean by the word "consuegro"?

A. Consuegros, like brothers.

The Court:

Q. He is father-in-law of a son or daughter of yours?

A. Yuson is father-in-law of a daughter of mine.

Q. And you are father-in-law of a daughter of his?

A. Of a nephew of Yuson.

Q. And on that account you call yourself his consuegro?

A. Yes, sir.

Miranda (continuing) :

Q. Do you know if Eusebio Yuson is living or has died?

A. I knew that he had died on Monday.

Q. Did you see the corpse of Eusebio Yuson?

A. Yes, sir, I have seen it.

Q. Where did you see it?

A. I returned on Monday.

Q. Where did you go?

A. In his house.

Q. Eusebio Yuson's house?

A. Yes, sir.

Q. Why did you go there?

A. I visited him because he is my consuegro.

Q. Do you know Francisco Amante?

A. Yes, sir.

Q. How do you happen to know him?

201 A. Because he is agent of my employer.

Q. Where was Francisco Amante on that day, Monday, on which you saw the corpse of Eusebio Yuson?

A. Francisco Amante was in Manila.

Q. When did he go to Manila?

A. On Sunday, at dawn of Sunday.

Q. Did you see Francisco Amante depart for Manila?

A. Yes, sir.

Q. From where did he leave for Manila?

A. He departed from the mill warehouse.

Q. Where is that mill warehouse?

A. In the suburb of Santo Cristo.

Q. How did it happen that you saw Francisco Amante set out at dawn on that Sunday?

A. He bade me farewell, because I lived in the warehouse.

Q. What was Francisco Amante carrying, if anything, when he set out from the warehouse at that hour?

A. Nothing.

Q. How did he set out, on foot, or in a vehicle?

A. In a carromata (two-wheeled vehicle drawn by one horse).

Q. Who drove the carromata?

A. A boy named Vicente.

Q. Do you know if Francisco Amante had a firearm?

A. Yes, sir, he had.

Q. What kind of a firearm?

A. Of two barrels.

Q. Where was that shotgun on that Sunday on which Francisco Amante went to Manila?

A. It was in the warehouse.

Q. How do you know that?

A. Because I did not leave there.

Q. In what part of the warehouse was the shotgun?

A. In a corner, toward Gapán.

202 Q. Could it be seen, or was it concealed by anything?

A. It could be seen in the corner.

Q. Where did Francisco Amante pass the night previously to his departure for Manila, which would be Saturday night?

A. After supper he went to the thrashing floor of rice, to guard the rice.

Q. And afterwards?

A. And at dawn he went to the warehouse and prepared to set out.

Q. What is the distance between the rice thrashing floor and the warehouse?

A. It is near; it is a distance equal to that from the market to the sugarcane plantation behind the market.

Q. How many fathoms distant, more or less?

A. Some 100 fathoms.

Q. Was there a carromata there?

A. Yes, sir.

Q. Was that carromata used the Saturday night preceding the departure of Francisco Amante for Manila?

A. No, sir, it had not been used.

Q. If it had been used would you have seen it?

A. Yes, sir.

Q. Why?

A. Because I was always there, and whenever the carromata was used I would see it.

Q. Nothing more.

Cross-examination by Prosecuting Attorney:

Q. At what hour are you accustomed to retire at night?

A. After supper.

Q. At what hour do you have supper?

A. Sometimes after the hour of evening prayer (6 p. m. about).

203 Q. After supper you immediately go to sleep do you not?

A. Sometimes we cannot go to sleep at once.

Q. On that Saturday, previously to the departure of Francisco Amante to Manila, you went to sleep early did you not?

A. I did not go to sleep at once.

Q. Did you retire shortly after supper?

A. A long time after supper I retired.

Q. Is it not true that after supper Francisco Amante departed?

A. On Saturday?

Q. Yes.

A. After supper he went to the thrashing-floor.

Q. And you did not see him again until the following day?

A. At dawn he returned to the warehouse.

Q. At what hour did you awaken on that Sunday?

A. At dawn.

Q. Had the sun already arisen or not?

- A. When I awakened it was very early dawn and yet dark.
 Q. Where did you sleep that Saturday night?
 A. In the warehouse.
 Q. Between the warehouse and the thrashing-floor, as you call it, there was bamboo was there not?
 A. Yes, sir.
 Q. How do you know that the shotgun was in the angle or corner of the house of the warehouse toward Gapán and not in the angle toward San Miguel?
 A. Why should I not know it when passing the place where the water is kept for drinking purposes I would pass by that location?
 Q. Where would Francisco Amante put his shotgun, would it not be in his room?
 A. In the room of Mrs. Andrea.
 Q. Mrs. Andrea was not there on that Saturday?
 204 A. She was there.
 Q. And on Sunday morning she was not there?
 A. She was also there.
 Q. You work for Andrea and Emilio Valdez do you not?
 A. Yes, sir.
 Q. What work do you perform there?
 A. Plowing or working in the sugarcane fields.
 Q. How long have you worked for Andrea and Valdez?
 A. A long time.
 Q. It is now a long time is it not?
 A. Yes, it is a long time now.
 Q. But if on the Saturday night you were sleeping you would not be able to know if the carromata of the warehouse had gone out.
 A. I would be able to know if I were asleep, because I sleep intermittently.
 Q. That is if you had awakened, but if you had continued sleeping you would not have known it?
 Ledesma: I object to the question because it is not argumentative.
 The Court: The witness may answer.
 A. I would be able to know because if I were awakened I would be able to see the carromata.
 Prosecuting attorney: That is all.

Statement of Andrea Reyes.

This witness, being first duly sworn, stated her name is ANDREA REYES, 50 years of age, a widow, land owner and resident of Gapán, Nueva Ecija Province, P. I. (A. Gempezao, interpreter).

205 Direct examination by Mr. Miranda:

- Q. What relationship exists between you and the accused, Emilio Valdez?
 A. He is my son.
 Q. What relationship exists between you and Francisco Amante?

A. He is my son-in-law.

Q. How is he your son-in-law?

A. Because he is husband of my niece.

Q. Where were you in the month of March, last?

A. I was in the seed-field.

Q. In what suburb is that seed-field?

A. In Santo Cristo.

Q. What municipality?

A. Gapán.

Q. And who lived with you in the suburb of Santo Cristo during that month?

A. Engracio, Quico, Mariano, and my nephews went there sometimes, but they do not live with me in the house.

Q. Do you know Eusebio Yuson?

A. Yes, sir.

Q. Do you know if he is dead or not, or if you have learned that he has died and the cause of his death?

A. No.

Q. But is Eusebio Yuson living or has he died?

A. I now know that he has died.

Q. How did you happen to know that he has died?

A. It is said that he was shot.

Q. When did you hear that?

A. Monday morning.

Q. What date?

A. I do not know what date it was?

206 Q. According to the information you had, when did the death of Eusebio Yuson occur?

A. It is said he died at night, and I heard of it the following morning.

Q. Where was Francisco Amante on the day that you heard that?

A. He was in Manila.

Q. When did he set out for Manila?

A. At dawn on Sunday morning.

Q. How did he set out, on foot or in carromata?

A. In carromata.

Q. Who accompanied him?

A. The driver.

Q. Was he carrying anything when he left?

A. No, sir.

Q. Did Francisco Amante have a shotgun there in the warehouse?

A. Yes, sir.

Q. Where was that shotgun when Francisco Amante set out for Manila on that Sunday?

A. It was in the warehouse.

Q. And during all day Sunday where was the shotgun?

A. It was there.

Q. How do you know it was there?

A. Because I saw it.

Q. In what part of the warehouse was the shotgun?

A. It was in one corner of the house.

Q. In what room of the house was the shotgun?

A. In the room.

Q. What use do you make of that room?

A. The furniture is there, and besides we use it as a sleeping room.

207 Q. Where was the shotgun on the Saturday before that Sunday?

A. It was also there.

Q. Where was the shotgun on Saturday night?

A. It was also there.

Q. At what hour on Saturday was the shotgun there?

A. It was there all day.

Q. And during all of Sunday night until Monday where was the shotgun?

A. It was also there.

Q. Why is the shotgun in your room?

A. Because I look after it.

Q. What were the relations between your family and that of Eusebio Yuson?

A. Good.

Q. To what time do you refer when you stated that your family had good relations with Eusebio Yuson's family?

A. In the past.

Q. That is all.

(On account of illness of the prosecuting attorney, and with the permission of the court, Mr. Buencamino, as private prosecutor, conducted the cross-examination.)

Mr. Buencamino:

Q. Is it not true that Saturday night, after supper, Francisco Amante left the warehouse to go to the inner court or to the rice thrashing-floor?

A. Yes, sir, he went, well, to the thrashing-floor.

Q. And he went to the thrashing-floor or to the inner court (yard) to guard the rice that was there, and when he returned he carried the shotgun did he not?

A. No, sir, he did not carry the shotgun.

208 Q. And is it not true that you, after Francisco Amante's departure to the rice thrashing-floor, did not see him again until he set out at dawn for Manila?

A. Yes, sir, because he called to me saying that he had to go.

Q. And is it not true that, after supper and after the departure of Francisco Amante for the thrashing-floor from the warehouse, you retired to sleep because it was already the hour of retiring?

A. No, sir, we were still talking.

Q. But in time you went to sleep?

A. Yes, sir.

Q. And you were awakened when Francisco Amante called to you at dawn to say that he was leaving for Manila?

A. Yes, sir.

Q. And during the time you were sleeping you could not know where that shotgun was and where Francisco Amante was, could you?

A. The room where I slept was closed.

Q. Were you the only person sleeping in that room, or were there others who slept there besides yourself?

A. I was the only one who slept in that room.

Q. Is there not in that room or in that warehouse any other person who sleeps in the room with you?

A. No, sir; when my daughter was going to the seed-field she was the only one who was accompanying me there.

Q. And Francisco Amante returned to your warehouse on Monday night after leaving for Manila did he not?

Q. Yes, sir, he returned.

Q. And he then carried a shotgun did he not?

A. He did not carry a shotgun.

Q. And during all day Tuesday following that Monday do you know where that shotgun was?

A. It was also there; that shotgun was only used when it was necessary to shoot some pigs in the sugarcane fields.

Q. Is it not true that Francisco Amante was carrying that 208½ shotgun when he would make his rounds about his fields?

A. If he did not have to shoot at some pig he would not carry it because I would not permit him to do so; I can not ask for a license in my name, and that is why my money was used in furnishing the guaranty, and it is my money that was utilized in making the purchase of the shotgun.

Q. So that you and your family consider that shotgun as your property?

A. Yes, sir.

Q. Subject to your disposition or that of all your family?

A. Yes, sir; If I do not care to permit it, no one can use it.

Q. And Francisco Amante does not have a house there in Santo Cristo?

A. No, sir.

Q. And Engracio Nolazco does not have a house there, close to your warehouse in Santo Cristo?

A. He has his house independent of ours.

Q. After Engracio Nolazco commenced to work there in your warehouse, during the day or the afternoon and the night, he would retire to your warehouse or to your house, would he not?

A. Very infrequently he would retire to his house.

Q. You say you had good friendly relations with the family of the deceased Eusebio Yuson and with him himself?

A. Yes, sir.

Q. The fact is that you and your family are slightly related to him is it not?

A. He is not related to me.

Q. Is not the father of Emilio Valdez or Eusebio Yuson or the wife of Eusebio Yuson related to you or to your husband?

A. No, sir.

209 Q. But you and your family had good friendly relations before the occurrence, did you not?

A. When I would go to the seed-field and we would meet I would salute him, and he would salute me, and our relations were such that he would laugh asking me why I did not ride in a carromata.

Q. Then, state, lady, why you did not assist at the funeral of Eusebio Yuson?

A. I was in the seed-field, and besides, as you may inquire in all of Gapán, I am not accustomed to attend funerals.

Q. Then, tell me, lady, since that time until now why have you not sent your condolence to that family?

A. I was occupied with my tasks, and I could not take time to do that.

Q. Then, tell me, why your son Emilio Valdez did not assist at the funeral of Eusebio Yuson?

Ledesma: I object to the question because it is beyond the knowledge of the witness.

The Court: The witness may answer.

A. It is not our custom.

Buencamino: That is all.

Recross-examination by Mr. Ledesma:

Q. On that night, Saturday, when Francisco Amante went to the thrashing-floor to guard the rice did you see him return to the warehouse on that same night?

Buencamino: I object to the question because the witness, as much in the direct-examination as in the cross-examination, has said nothing as to whether or not she was in the warehouse.

210 The Court: Objection sustained.

Statement of Gil Abad.

This witness, being first duly sworn, stated his name is GIL ABAD, 33 years of age, married, is a farmer and a resident of Gapán, Nueva Ecija Province, P. I.

Direct examination by Mr. Miranda:

Q. Do you know Lucas Figueroa and Antonia Abad?

A. Yes, sir, I know them.

Q. How do you happen to know Lucas Figueroa?

A. Because he is a tenant of my brother, Antonio Abad.

Q. You knew Eusebio Yuson?

A. Yes, sir.

Q. Do you know of the violent death of Eusebio Yuson?

A. Yes, sir.

Q. When did you learn of the violent death of this man?

A. March 17th.

Q. At what hour?

A. After 7 o'clock at night, approximately.

Q. And how did you learn that?

A. Being in the drugstore of Mr. De los Santos we saw many people running, and they said the house of Eusebio Yuson had been assaulted.

Q. Where were you at that moment when the people who were running stated that the house of Eusebio Yuson had been assaulted?

A. In the drugstore of Mr. De los Santos which is in front of the town church.

211 Q. Do you know Emilio Valdez?

A. Yes, sir.

Q. How do you happen to know him?

A. I have known him for a long time because he lives in the town of Gapán.

Q. Do you remember having seen Emilio Valdez on the night of the occurrence?

A. Yes, sir.

Q. Where did you see him?

A. In the house of Guillerma Liuag.

Q. At what hour?

A. Between 7 and 7:30.

Q. And what was the motive or occasion that caused you to see him there?

A. I was passing by there in Corro St., which is in front of the house, when I saw them in the window talking, Emilio Valdez and Migiel Liuag, and they invited me to come into the house, and I replied "not now; we are going to play dominoes at the drugstore of Mr. De los Santos or the drugstore of Mr. Pardo," because it is our custom to always play dominoes there, and they replied they would go there later.

Q. At what hour do you say this occurred?

A. It was between 6:30 and 7 when I saw them in the window of the house of Guillerma Liuag.

Q. Have you had any conversation with Lucas Figueroa regarding the occurrence that took place on the night of the murder?

A. Yes, sir.

Q. What conversation have you had?

A. About the middle of the month of May Lucas Figueroa was in the house calling on a nephew of mine. One Urbano Abad was also in the house at the time, the nephew in question. The former came on account of his father to take back a carabao cart and
212 other articles to Castellanos, where his carriage shop was located, and then I asked him: "From where do you come," and he replied that he came from my brother's house and from the municipal building; then I asked him, "what did you do in the municipal building," and he told me, "I have been questioned by the municipal president to make a statement regarding the case of the death of Eusebio Yuson"; and afterwards he asked me, "Why, do you know nothing of the case, or do you have no knowledge of the death

of Eusebio Yuson?" He himself asked me that, and I replied that I did not know it.

Q. Is that all he said to you?

A. Yes, sir.

Q. He did not say anything else to you?

A. Nothing more; I told him I had not known what had occurred.

Buencamino: I ask that all of the statement of the witness regarding Figueroa be stricken from the record, based on the fact that the witness Figueroa has not been called here to be questioned regarding this point.

The Court: But Lucas Figueroa can be brought here in rebuttal as a witness. Can not Figueroa be presented now in order to contradict what the witness has said? What has the defense to say?

Chicote: We say that we have known only recently regarding this incident, and we are not able to assume that Lucas Figueroa had talked with the witness now. We only try to contradict a statement that Figueroa has made with regard to what this witness said to him; so that as he made no reference regarding that in the direct examination, neither can it be cross-examination.

213 The Court: I think it would not be an injustice to strike from the record the statement of this witness; however, I understand that the order of procedure is not very correct. There is no reason, therefore, to strike the statement from the record.

Buencamino (continuing):

Q. You came from the drugstore of Mr. De los Santos when you passed through Corro St. and saw Mr. Valdez in the house of Liuag?

A. No, sir.

Q. Were you going in the direction of the drugstore of Mr. De los Santos?

A. Yes, sir.

Q. From where were you coming?

A. I came from my house.

Q. And your house with relation to the house of Guillerma Liuag, how far is it?

A. It is next to that house, only it is separated by a cross street and the protestant chapel which is on the side of the lot of my house.

Q. In what street is the drugstore of Mr. De los Santos?

A. In Balmonte St.

Q. And is it necessary, Mr. Abad, to pass through Corro St. to go to the drugstore of Mr. De los Santos?

A. Yes, sir, I was accustomboned to pass that way because it is the most direct street.

Q. At what hour did you leave your house on that night?

A. Well, from 6:30 to 7.

Q. Was it yet sufficiently light?

A. The night was already dark.

214 Q. And can you remember and tell us what other persons you saw that night between those same hours?

A. Yes, sir: After passing the drugstore of Mr. De los Santos I

went to the "Germinal," which is a store near the drugstore of Leopoldo Pardo where we are accustomed to play dominoes, and I saw there P. Mariano de la Pax, Cenón Monestarial and Julio Belmonte, which three jointed me, and we went to play dominoes.

Q. And between the hours of 6 and 7 you did not see any people other than Emilio Valdez and Miguel Liuag?

A. Between 6 and 7 when I went into the house I passed through Corro St., and I saw them seated in the window.

Q. And you saw no one else during that hour?

A. Mr. De los Santos and those persons that I have mentioned who played dominoes with me.

Q. You did not go to the place of the occurrence when you received that news?

A. No, sir.

Q. How many stories has the house of Guillerma Liuag?

A. Only one story.

Q. How far is the window, about, in which you saw the accused, from the street?

A. It is some 3 meters from the street to the banister of the window.

Q. And who were looking out from the window?

A. Miguel Liuag and Emilio Valdez.

Q. No one else?

A. No one else.

Q. And did you see if there was any other person besides those two in the house?

A. I did not see any one else.

Q. Was there a light there, in truth, at that hour?

215 A. Probably; I do not well remember.

Q. However, it was already sufficiently dark?

A. Yes, sir.

Q. Considering the darkness at that moment at what distance could one distinguish any one?

A. I could distinguish them well because they were at the window.

A. What distance were you from them, more or less?

A. Some 4 meters.

Q. So that it was not yet so dark that one could not distinguish a person by the light of the day?

A. I distinguished them because they were at the window.

Q. I ask you, and request that you answer my question, if it was not sufficiently dark so that one could not distinguish a person at a distance of 4 meters by the daylight?

A. I do not understand well the question.

Q. You said that the night was dark already when you saw those two men; you also said that you do not well remember if there was or was not a light in the house; and you said that you distinguished Emilio Valdez and Miguel Liuag at a distance of some 4 meters, you being in the street and they at the window. Now I asked you: so then the night was not so dark that you could not distinguish by daylight a person at a distance of 4 meters from you?

A. One could distinguish very well because they were at the

window, and I in the street; and I remember more or less that there was something in the house because I distinguished them very well.

Q. Then you distinguished them not by daylight but by some light that might have been in the house?

216 A. Yes, sir.

Q. Then there was a light in the house?

A. Probably; I do not remember.

Q. How is it that you do not remember if there was a light when you say that you distinguished them by the brightness of a light and not by the light of day?

A. I do not remember that.

Q. Then how could you see them if you do not remember whether or not there was a light in the house, when you say you recognized those persons by the clearness of a light and not by the daylight?

A. I did not state it was by the clearness of a light and that I did not know whether or not there was a light, but I distinguished them and knew them.

Q. But if it was dark, how could you distinguish them?

A. Because they were in the window of the house.

Q. But if there was no light the house was dark, and how could you distinguish them?

A. Perhaps there was a light, but I distinguished them very well because they were at the window.

Q. Was there any other person present when you had the conversation with Lucas Figueroa?

A. No, sir.

Q. You two only?

A. I was at the window because he called to the house.

Q. So that you were at the window of your house, and he was in the street?

A. Not in the street; he was inside the fence of my house.

Q. But in the lot, on the ground?

A. Yes, sir; I was at the window, and he was standing below.

217 Q. And that occurred about the middle of the past month of May did it not?

A. Yes, sir.

Q. And that was also in your house?

A. Yes, sir.

Q. And on the occasion when Lucas Figueroa had been invited to your house by your brother?

A. Yes, sir.

Q. And on the arrival of Lucas Figueroa you asked him why he had been at the municipal building?

A. He told me that because I asked him from where he came, which is the custom when one calls, we ask him "from where do you come," and he said that he came from the house of my brother and from the municipal building.

Q. And then you asked him after that, as is natural, "What have you done in the municipal building?"

A. Yes, sir, I asked him.

Q. And he said that he had been there to make a statement before the president and before the judge, did he not?

A. He did not say any thing more than that.

Q. And in regard to the investigation of the assassination of Eusebio Yuson?

A. Yes, sir.

Q. And what did he say to the president, that he had recognized a man?

A. That he saw a man, and that he had not recognized that person.

Q. Is that all that Lucas Figueroa said to you?

A. Yes, sir.

Q. You did not ask Lucas Figueroa if he only saw one person, or if he saw two or three persons?

218 A. No, sir.

Q. Neither did you ask him if he had seen Emilio Valdez?

A. No, sir.

Q. And neither did you ask him if he saw Juan Gatmaitan?

A. No.

Q. You did not ask him if he had seen other persons, neither did he deny that?

A. Yes, sir.

Q. Neither did you ask him if he had seen any person on that occasion or not?

A. No, sir.

Q. Neither did he deny if he carried on arm on that occasion?

A. He said nothing more than that he had seen that that person was carrying something which he saw.

Q. And he said that he had seen that person near the house of Eusebio Yuson?

A. Yes, sir.

Q. Toward the lot of the house of Antonio Adorable?

A. Yes, sir.

Q. And the house of Antonio Adorable faces the house of Eusebio Yuson?

A. Yes, sir.

Q. And he personally told you that that house faces the street which is in front of the house of Antonio Adorable?

A. He said nothing to me regarding that.

Q. But did he not indicate to you the place where he had met those persons?

A. He told me nothing more than in front of the house of Eusebio Yuson he had seen that person whom he did not know and that he carried something.

219 Q. When you saw Miguel Liuag and Emilio Valdez at the window you looked at a watch and determined the hour?

A. No.

Q. Then, can you inform us what the motive was that caused you to remember or to determine that hour approximately between 6 and 7?

A. Because I am accustomed to go to that place about 7 p. m.,

and when I arrived at that drugstore of Mr. De los Santos I at once heard from the people there about the assault of the house of Eusebio Yuson, and I calculated that that would be the hour when I saw Miguel Liuag and Emilio Valdez.

Q. But you did not hear the arrival of the train?

A. No, sir.

Q. You only heard that the house of Eusebio Yuson had been assaulted?

A. Yes, sir.

Q. Neither can you assure us how long it was after the assault of the house of Eusebio Yuson that you received the news?

A. About a moment.

Q. How do you know that it was a moment?

A. I had no sooner arrived at the drugstore of Mr. De los Santos when that news was received.

Q. And how do you know that that news was received by you a moment after the event occurred if you were not present at the occurrence?

A. Because the people came running.

Q. Did you hear shots that night?

A. No, sir.

Q. And where were you when you heard the news?

A. In the drugstore of Mr. De los Santos.

220 Q. And can you again tell us who were present then in the drugstore of Mr. De los Santos?

A. I do not remember who were present.

Q. Do you not remember having said just a moment ago that there were other persons there, whom you named? Where were those persons, then, whom you named?

A. In the store "La Germinal."

Q. You went to the store of "La Germinal" after going to the drugstore?

A. Yes, sir.

Q. Who accompanied you from the drugstore to the store of "La Germinal?"

A. I only.

Q. How is it that you remember the people that you saw in the store of "La Germinal?" and do not remember the persons whom you saw in the drugstore of De los Santos?

A. Because I had been playing with them in "La Germinal."

Q. In the drugstore, had you not been playing?

A. No, sir.

Q. But how long had you been in the drugstore?

A. In the drugstore the length of time that one would be there, that is to say, I had scarcely arrived and heard the shot, saw the people running in the street, saw the stores were being closed, and then I went to "La Germinal" because the druggist, De los Santos, wished also to close his drugstore.

Q. Then you did hear a shot?

A. No, sir.

Q. Do you deny, Mr. Abad, that you have said a moment ago that you heard a shot?

A. I heard no shot.

Q. But do you deny having said that to the court? •

A. But I did not hear it.

221 Q. Do you deny having stated to the court that you heard a shot?

A. I did not hear the shot.

Q. How long were you playing dominoes in "La Germinal?"

A. We remained there some 2 hours.

Q. And who played?

A. P. Mariano de la Paz, Cenón Monestarial and myself.

Q. And was there anyone else?

A. And afterwards, we continuing to play, Leopoldo Pardo came from his house.

Q. And afterwards did you go to the drugstore of Mr. De los Santos?

A. No, sir.

Q. Then, where did you go?

A. When we quit playing dominoes each one of us retired to his home.

Q. And did you not discuss the assault?

A. Mr. Pardo said that Mr. Eusebio Yuson had been killed; besides the head sexton who went there to ask permission of P. Mariano to have prayers said.

Q. And before, when you were in the drugstore of De los Santos, did you not hear that Eusebio Yuson had been killed?

A. No, sir.

Q. And is there not some bond of relationship between you and either of the two accused, Mr. Abad?

A. No, sir.

Q. But you and Mr. Valdez are good friends?

A. Yes, sir, we know each other.

Q. And you and he worked together in the last political campaign in the municipality of Gapán?

A. He was working also for the candidacy of Miguel Liuag.

Q. So that you and he were working together for a candidate?

A. Yes, sir.

222 Q. And that last political campaign in Gapán was a very quarrelsome one, was it not?

A. Yes, sir.

Q. And the passions were very much aroused (much ill-feeling occasioned) during that political campaign, is it not true?

A. I do not know.

Q. Is it not true, Mr. Abad, that between yourselves, the partisans of Mr. Liuag and the companions of Mr. Valdez in the same party, imputed the arrest of Messrs. Emilio Valdez and Francisco Amante to the influence of the opposing party?

A. I know nothing regarding that.

Q. That is all.

Miranda: Is there any relationship between you and the Yuson family?

A. No, sir.

Q. That is all.

Statement of Miguel Liuag.

This witness, being first duly sworn, stated his name is MIGUEL LIUAG, 28 years of age, a bachelor, a farmer, and a resident of the town of Gapán, Nueva Ecija Province, P. I.

Direct examination

Miranda:

Q. Do you know Eusebio Yuson?

A. Yes, sir.

Q. Do you know that he died a violent death?

A. Yes, sir.

Q. Do you know how the murder occurred?

222 1/4 A. I know nothing regarding the occurrence; I have heard he was killed by a shot.

Q. Do you know Emilio Valdez?

A. Yes, sir.

Q. On the day of the occurrence to which you have just referred did you see Emilio Valdez?

A. Yes, sir.

Q. Explain where you saw him and in what circumstances you saw him.

A. Well, I saw Emilio Valdez on the afternoon of the day of the occurrence, I being in my aunt's house, Guillerma Liuag who is called Ima there. While I was there about 5 p. m. Emilio Valdez passed in front of that house of Guillerma Liuag, and I invited him into the house, and came in.

Q. How long was he there?

A. Until that hour, until after 7 approximately.

Q. Were there other persons there in that house?

A. Yes, sir; besides the woman owner of the house her daughters were there.

Q. But to what time do you refer?

A. During the time I was there.

Q. Were you in that house a very long time?

A. Afterwards Antonio Liuag came, and later there was also there one Tito who was passing by.

Q. Do you know one Thomas Diego, a cochero (driver) by profession?

A. Yes, sir.

Q. Do you know where he lives?

A. Yes, sir.

Q. Where?

A. He lives in the suburb of San Vicente.

Q. With regard to the house of the murdered man Eusebio Yuson, at what distance or at what place does this man live?

222 1/2 A. I do not believe that the distance from where he lives is less than 30 meters; I cannot predetermine it, but it is sufficiently far from Eusebio Yuson's house (quite a distance).

Q. Were you at the place of the occurrence on any occasion?

A. Yes, sir.

Q. When were you there?

A. I was there on the same day after the occurrence took place, that is to say,—; no, because the event occurred at night, and on the following morning I went to the place.

Q. What motive had you in going there?

A. For the reason that I was in the justice of the peace court, having been subpoenaed in a lawsuit there, and the justice of the peace could not hear the case. I was in the municipal building, and on that occasion Capt. Crockett arrived; and afterwards the justice of the peace, the captain and I went to the place of the occurrence, and in the road we met the supervising teacher of the town of Gapán.

Q. And what, if anything, did you do in the house of the murdered man?

A. I was in the house of the murdered man a moment, and afterwards I went to see the murdered man, and in the room where the murdered man was I expressed my sympathy to the widow who also was at the side of the bed of the deceased.

Q. And were you in the lot (yard) of the house?

A. I was there talking with certain persons who were there and at the same time seeing all that was going on there and aiding the justice of the peace and Capt. Crockett, because this captain and the justice of the peace were making the investigation, and I was aiding them in said investigation at the place where the occurrence took place.

223 Q. Do you remember whether or not the individual called Tomás Diego was there?

A. Yes, sir, he was there.

Q. Did you have any conversation with him regarding the occurrence?

A. Yes, sir.

Q. State what it was.

Buencamino: I object because it is not proper for the defense to try to contradict the witnesses of the prosecution when they have not been given an opportunity to explain those conversations to which they refer.

The Court: Objection of Mr. Buencamino overruled, and the right is reserved to introduce this witness in his rebuttal.

A. He voluntarily stated to me, that is to say, he asked me from where could have come the shot that caused the death of the murdered man, because he approached during the conversation we had a group of spectators formed there, and he said "the shot could not have come from anywhere but this spot," indicating a spot in the interior of that lot, "because I from the interior of my house saw the flash of the gun." That is all that I heard regarding the case; it only refers to the place from which the shot could have come, because from the window of his house, according to his statement, he perceived the flash of the gun.

Miranda (continuing) :

Q. Did he make any statement regarding the person that he might have seen at the place of the murder?

A. There in the neighborhood where he was searching for the spot where a person might have entered or departed, and he said that he had left the house and was there in the street in front of the house itself, but that he did not see any person that had left there at that moment, that is to say "the criminal could not have departed by this spot; but he could have escaped by that route." Thus he said to me, indicating a certain spot.

Buencamino: I object to your asking suggestive questions of this witness.

Miranda (continuing) :

Q. You stated that between 5 and 7 p. m., more or less, on the night of the occurrence you were with Emilio Valdez in the house of Guillerma Liuag. State if you saw on that night Gil Abad?

A. Yes, sir.

Q. Where did you see him?

A. In the street.

Q. Explain the circumstances how you happened to see him.

A. I saw Gil Abad coming out of his house and going in the direction of "Loasan," that is to say, in the direction west of Gapán, and we invited him to accompany us, and he said "no, I am going straight ahead," for he was then going toward the drugstore of Mr. Pardo to play dominoes, I believe; and he at the same time, a few moments before leaving, invited us to go with him, saying "we will go and play dominoes at the place where we are accustomed to play nightly."

Q. At what hour, approximately, was that?

A. It would be between 6:30 and 7.

Q. Until what hour was Emilio Valdez there?

A. It was already dark, and before we separated there he said "very well, Miguel, you go to supper, and I will do the same, but afterwards we will go and play dominoes"; then he departed; I left; Antonio Liuag departed, and upon leaving the house we separated because my house is there, that is to say, no sooner does one leave that house than you are at the foot of my house, and afterwards Antonio and Emilio Valdez went down the street toward "Loasan," and I also entered my house.

Q. Nothing more.

Cross-examination by Mr. Buencamino:

Q. All that occurred between 5 and 7 p. m.?

A. The visit of Emilio Valdez, yes, sir.

Q. Without being able to determine exactly the hour?

A. No.

Q. What hour was it, approximately?

A. It was about 5:30, or after 7.

Q. So that when you answered my question that all this occurred between the hours of 5 and 7, although you so stated, you were not very sure of your answer?

A. I was very sure.

Q. Are you sure now that it was after 7 o'clock?

A. I cannot determine because the question is that there are times in which the hours seem longer than the days, and it was then already late when I saw Emilio Valdez and when we separated, but I calculated the hour was 7 o'clock because when I arrived home the supper was already on the table, and I had not half finished supper when Antonio Liuang returned to the house carrying a niece of mine who was sick with paralysis at that time in the house of said Antonio Liuang, which house faces my house. She was there playing with his nephews (or her nephews), and my niece was very much frightened, so much so that Antonio Liuang brought
226 her in his arms. Then I asked her "why do you come in this way," and she told me that Antonio Liuang arrived at his house and stated to his nephews (or her nephews) that near "Loasan" an assault had been committed by armed men because there had been heard fired many shots, and it was thought that if it did not occur at the house of Adorable it must have been at the house of Eusebio Yuson, because at that place the shots were heard, and my niece then said 'I am afraid; I will have to ask the aid of Antonio Liuang to carry me to this house.'

Q. All that news you received in your house after 7 o'clock.

A. Yes, sir, that is to say, a short time after I seated myself at the table.

Q. But it was not very much after 7 o'clock?

A. Perhaps.

Q. At what hour, about, are you accustomed to have supper?

A. From 7 to 8.

Q. And from where did you come in the afternoon of that day at 5 o'clock when you entered the house of Guillerma Liuang?

A. From my house.

Q. And were you or did you enter the house of Guillerma Liuang at 5 in the afternoon, and there already find Emilio Valdez?

A. No, sir, I was the first one to enter the house, there being in the house then no one except the mother and her daughters.

— Was it probably a half an hour or more after you were in the house of Guillerma Liuang?

A. It could not have been that long.

Q. And during that time you were alone in the house what did you do?

227 A. I was rocking myself in an arm chair that was there near the window.

Q. And were you talking with one there, or were you alone?

A. I was alone; I was not talking with anyone.

Q. But at that place were you alone?

A. Yes, sir.

Q. You were not talking with anyone?

A. With no one.

Q. About half an hour?

A. I do not believe it was half an hour.

Q. How many minutes do you calculate, approximately, it was?

A. I cannot determine, but it was a little time afterwards; I believe it did not exceed 10 minutes.

Q. And were you there awaiting Emilio Valdez by arrangement that you and he would meet there?

A. No, sir.

Q. And how did Emilio Valdez happen to arrive there?

A. Guillerma Liuag is my aunt, and I go to her house frequently 2 or 3 times daily, that is to say sometimes, and as on that afternoon I had nothing to do I went to that house. The arrival of Emilio Valdez was a casualty, and — I saw him I invited him to enter.

Q. And when he saw you he came in, seated himself there, and you and he were talking?

A. Yes, sir.

Q. And were the people of the house also talking with you two?

A. No, sir.

Q. But the people of the house were not in the room where you and he were?

A. Sometimes they came in to offer us cigarettes, as is the custom.

Q. And they said to you and him that they would prepare
228 supper?

A. No.

Q. Do you remember perfectly that they did not invite you and him to supper?

A. They did not invite us.

Q. What was the subject of your conversation during those two hours, almost?

A. I do not remember all the conversation we had; I cannot tell you.

Q. Very good, tell the court the conversation you had with Emilio Valdez, all that you remember clearly.

A. At that time I believe he and I had very few meetings that we did not discuss the elections, because I considered Emilio Valdez as one of the principal leaders that I had, and then very rarely was the time I would see him that I would not say, "Helloo, Emilio, what news is there of the elections?"

Q. The fact is that at that time you and Emilio Valdez would see each other, that is to say, you would meet almost daily?

A. I cannot tell you how many times, but it was not daily.

Q. But almost daily?

A. Frequently, yes.

Q. And the Guillerma Liuag to whom you refer is your aunt is she not?

A. Yes, sir.

Q. Your mother's name is Juana Liuag is it not?

A. Yes, sir.

Q. And Juana Liuag is the person who signed a statement in your favor?

A. Yes, sir.

229 Q. And Gil Abad when you (plural) met him was talking a long time with you in front of the house of Guillerma Liug?

A. Not a very long time, no longer than he would be occupied in a short conversation.

Q. Later Gil Abad had a conversation with you (plural) probably of some 5 minutes' duration?

A. I cannot determine how many minutes.

A. It was long enough to salute each other, to say "how are you," for him to invite you (plural) to play dominoes in the drugstore of Mr. Pardo or that of Mr. De los Santos, and for you to refuse to go there with him?

A. Yes, sir.

Q. So that if Gil Abad has stated previously in this court that he did nothing more than to pass in front of that house, salute you (plural) and to continue on his way, Abad lied, did he not?

Southworth: I object because it is suggestive; he has no right to say what the other witness has said to the court.

The Court: Ask other questions, but without stating what the other witness has declared, Mr. Buencamino.

Buencamino (continuing):

Q. So the fact is that Gil Abad did not continue on his way after speaking to you, but that he stopped there a certain time?

A. Yes, sir, he stopped, and there occurred that conversation which I have already related to you.

Q. You stated that Emilio Valdez came from his house?

A. He came from "Loasan," but I cannot state from where he came (witness doubtlessly means from the direction of "Loasan"); what I know is he came from the west.

Q. Did you not state that he was going in the direction of "Loasan"?

230 A. It may be.

Q. Did you not also state that Gil Abad came from his house?

A. Yes, sir, I have said that.

Q. How do you know that he came from his house?

A. Because the house of Gil Abad can be seen from the house of Guillerma Liug.

Q. Where were you and Emilio Valdez when Gil Abad passed by?

A. We were at the window looking on the street; I was at the east side, and Valdez at the other side.

Q. And you and Valdez saw Mr. Gil Abad passing by, or did you and Valdez not see him?

A. Yes, sir, we saw him.

Q. But was it sufficiently light to see at night a person at a distance of 4 meters?

A. That night we recognized him when he was passing.

Q. But because it was light you saw him.

A. I cannot assure you of that, but the fact is we saw him in passing.

Q. But you can state exactly if you recognized him by daylight, or by any light that was located there?

A. I cannot say that.

Q. The suburb of San Vicente is in the center of the town?

A. Yes, sir.

Q. And the house of Tomás Diego is near that of Eusebio Yuson?

A. It is not very near, neither is it far away; it is located at a distance of about 30 meters.

Q. And you were in the house of Eusebio Yuson the day
231 after the occurrence?

A. Yes, sir.

Q. And you had then a conversation with Tomás Diego?

A. Yes, sir.

Q. Did you have a conversation with Tomás Diego, or did you only overhear something that the said Tomás was saying to other persons?

A. Other persons were there.

Q. But was the conversation between you two only, or were his words directed to all the people that were there?

A. He was looking at me when he made the statement, and I took it that he was talking to me.

Q. And he made those statements regarding what you have already stated, in answer to questions you had asked him?

A. No, sir.

Q. They were voluntary statements?

A. Yes, sir, in answer to the questions asked there: where could the murderer or assassin have been, his location, because the captain of Constabulary was searching the neighborhood, looking at the fence to see if any part of it was broken down and examining the stairway.

Q. Tomás told you all that?

A. No, it is what I overheard.

Q. All that Tomás Diego told you on that occasion is what you have declared here, in answer to the questions of Mr. Miranda?

A. Yes, sir.

Q. So that Gil Abad told you that he was going to the drugstore of Mr. Pardo and not to the drugstore of De los Santos. Do you know if he went to the drugstore of Mr. De los Santos?

A. Have I not told you what I had already stated to the court?; that I went there to the house for supper as was customary, but that the occurrence made me sick, to such an extent that I had to leave the supper table, and I did not leave the house that night.

Q. So that after seeing Emilio Valdez that night, for the last time you did not return to see him until the following day?

A. I remember having seen him in front of the ground floor of the house in the afternoon when I assisted at the burial of the murdered man.

Q. You assisted at the funeral of the murdered man?

A. Yes, sir.

Q. Emilio Valdez was not present?

A. No, sir.

Q. And you stated also that when you, Emilio Valdez and Antonio Liuag left the house the last two went in the direction of the west?

A. Yes, sir.

Q. Referring to the house of Guillerma Liuag in what direction is the house of the murdered man, Eusebio Yuson, toward "Loasan" or in what direction?

A. Toward "Loasan."

Q. And when you three separated you went toward your house, and Antonio went also toward "Loasan," as you said?

A. Yes, sir.

Q. And you were looking in the direction they were going, to your house?

A. No, sir, I did nothing more than to cross a street, and there we separated; afterwards I went down that street and directly to my house.

Q. Before that occasion when you (plural) were together at that house of Guillerma Liuag, you and Emilio Valdez went together to different places and different locations?

233 A. I was frequenting his house; he would come to my house, and at other times we would go to different places.

Q. And even after that occasion you and Emilio Valdez went together frequently, and went together also to different houses on different occasions?

A. On that occasion.

Q. On other occasions?

A. I do not remember.

Q. You do not remember?

A. I believe that we went together to the exposition of San Ysidro.

Q. But you do not remember having been with Emilio Valdez at any time in another house besides that of Guillerma Liuag?

A. It may be, but I do not remember.

Q. Well, what is it that makes you remember particularly that afternoon on which you and Emilio Valdez were in the house of Guillerma Liuag and especially that you and he saw Gil Abad? What causes you to remember that?

A. It is very natural that after the detention of Emilio Valdez that we should refresh our memories saying "that night Emilio Valdez was with us" * * *, finally, conversations relating to that affair.

Q. And Emilio Valdez was arrested on May 28th, a month and a half after the murder, more or less?

A. I do not well remember the date of his arrest.

Q. But it was in May?

A. I believe so.

Q. And he was under arrest until June 3rd on which date he was released on bail, some days before the elections?

A. I do not remember the date; he had been detained some days, yes.

234 Q. Do you not remember that he was not released but one day before the elections, I believe, and that you were here in the court-room looking for him?

A. I was not here in the court-room looking for him.

Q. But you do not remember if it was before or after the elections?

A. The day before the elections.

Q. So that the conversations that you and Emilio Valdez might have had to refresh and to fix the fact that you had been together on that day in the month of March, all those conversations you verified after he was given his liberty under bond?

A. The day that he was arrested I myself, before those conversations and recalling an affair that had occurred very recently, said to myself that on that day without doubt Emilio Valdez was with me, and later the two of them, Abad and Valdez, talked over the matter with me.

Q. But you did not have a perfect and full conviction in your own mind until you had that conversation with them, did you?

A. I was fully convinced of it.

Q. But only afterwards?

A. Afterwards, it came voluntarily to my memory.

Q. But you remember the day of the elections do you not?

A. Yes, sir.

Q. That was a great event also?

A. Yes, sir.

Q. Do you remember also the day on which Emilio Valdez was released on bond because you saw each other in Gapán?

A. I remember that the day he was released on bail was some days before the elections.

235 Q. Where did you see each other afterwards?

A. I was in his house.

Q. And at what other places did you see each other?

A. Afterwards we were meeting frequently, because he was my leader.

Q. And at what other places?

A. Sometimes in my house.

Q. And at what other places?

A. Sometimes he would go with me to obtain votes.

Q. Where would you go for that purpose?

A. I do not remember.

Q. Give us an example.

Q. I can tell you some places where we went.

Q. That day?

A. Not that day; I cannot remember that day.

Q. Then you cannot remember at what place you and Emilio Valdez were on that day on which he obtained his liberty under bond?

A. We were on the ground floor of his house.

Q. But besides that place do you remember any house where you and he were on that day?

A. From the ground floor of his house I remember that, at the suggestion of others, we went * * *.

Q. Emilio Valdez and you?

A. After being on the first floor of his house we went for a ride in an automobile; we arrived there at the store of Vadong, and then returned.

Q. And were you not together again on that day?

A. We were in Gapán when night fell.

Q. But did you not see each other again in Gapán after returning in the automobile?

A. No; I do not now remember, because you will comprehend those were days when I was very busy, days of much occupation, because I was a candidate; that is why I do not remember.

Q. And when Gil Abad passed by there, was Antonio Liuag already there in the house of Valdez with Valdez?

A. Antonio Liuag was not yet there.

Q. And that Tito, what is his name?

A. We are accustomed to know him by that name only.

Q. But do you not know his real name?

A. No.

Q. But that Tito is he a land owner or not?

A. He was a carpenter.

Q. And was that Tito already there when Gil Abad passed by?

A. Not yet; because, besides, that Tito is a relative of Guillermo Liuag.

Q. And Antonio Liuag was talking also with you (plural) there at the window?

A. Yes, sir.

Q. Was he seated there or was he below in the street?

A. You will know that at first he was passing by, and afterwards came up into the house.

Q. But in passing you (plural) invited him to enter?

A. Yes, and I asked him from where he came.

Q. And you (plural) invited him to come in?

A. Yes, sir, and he came in.

Q. And you (plural) asked him where he was going?

A. Yes, sir.

Q. And he talked with you (plural)?

A. Yes, sir.

Q. And how long was Antonio Liuag with you people in the house of Valdez?

A. He was there a few moments more than ordinarily; not very long.

237 Q. Good! you are an intelligent man, and know what is 15 minutes and what is half an hour.

A. But that time I cannot determine.

Q. But if you have time to think, can you not think how long it was?

A. The conversation could not have lasted more than half an hour.

Q. Before he departed?

A. Yes, sir.

Q. At what time did Antonio Liuag pass by there the first time?

A. The hour when he passed was approximately before dark.

Q. At what hour, approximately?

A. I do not remember.

Q. What time? Was it before dark?

A. Yes, sir, before it became dark.

Q. And when he returned was it already dark?

A. Yes, sir.

Q. How long a time passed from the time he passed the first time in front of that house until he returned to the same?

A. I think it would not be less than half an hour.

Q. And afterwards, after that, he entered the house?

A. Yes, sir.

Q. And he was with you (plural) close to half an hour?

A. Yes, sir.

Q. Did you say also that Gil Abad passed by there at a certain hour?

A. From 6:30 to 7.

Q. How could you determine that Gil Abad passed by there between 6 and 7, and you cannot determine the hour when Antonio passed by there?

238 A. I cannot determine.

Q. You have almost asked for time to answer.

A. Mr. Abad passed at that hour, from 6 to 7, about.

Q. Now, I ask you at what hour did Antonio Liuag pass by there the first time?

A. From 6 to 6:30, or 6:45.

Q. And at what hour did the said Antonio Liuag enter the house there?

A. Not later than $\frac{3}{4}$ of an hour afterwards.

Q. So that about 6:30 he passed by there?

A. Yes, sir.

Q. Then Liuag was already there when Abad passed?

A. Yes, sir.

Q. How can you determine now, saying or giving a fixed time from 6 less a fourth to half an hour, and before you could not determine it?

A. Yes, sir, I had said that Gil Abad had passed a half an hour before, because I at that hour of 6:30 is the hour I generally am accustomed to await for him, and that is the hour exactly when the sun sets and night falls; that is why I can determine the time to which I refer.

Q. And why before could you not determine those hours that you are now sure of?

A. Approximately I have stated all the hours.

Q. You referred a moment ago that at that time darkness fell later; I believe that is about what you wished to say, and that now the night comes earlier. What do you mean by that? Do you mean to say that now the sun sets earlier than at that time?

A. Now night falls afterwards.

Q. That is to say at that time the sun set earlier than when it sets at this time, in July.

239 A. Yes, sir.

Q. Nothing more.

The Court:

The session of the court is now closed until this afternoon.

Afternoon Session.

Having again called this case on the afternoon of this day, July 11, 1912, for a continuation of the hearing before the Hon. Ysidro Paredes, Judge, the same parties appeared.

Continuation of Evidence for the Defense.

Statement of CIRILO B. SANTOS.

This witness, being first duly sworn, stated his name is Cirilo B. Santos, a lawyer, 35 years old, resident of the municipality of San Miguel de Mayumo, Bulacan Province, P. I.

Buencamino:

Your Honor, we do not know what is intended to be proven by this witness, and desire to call the court's attention to the fact that this witness has been present in said court during the hearing of the evidence.

The Court:

Good, he may testify.

Direct examination by Mr. Chicote:

Q. Do you know Emilio Valdez?

A. Yes, sir.

Q. Did you know Eusebio Yuson?

A. Yes, sir.

Q. Did you know if those two persons have had any time any litigation regarding lands?

240 A. Yes, sir; I have been the lawyer for Emilio Valdez and for his mother, Andrea Reyes.

Q. In what year was that litigation?

A. They were heard in this court, cases Nos. 248 and 254.

Q. What Court?

A. This Court of First Instance.

Q. Do you remember the year in which those proceedings occurred?

A. In 1907, and they terminated in 1908 by virtue of agreement of the parties.

Q. Can you tell us, in view of that litigation or in consequence of that litigation, what is the state of feeling of your client Mrs. Andrea Reyes or of the sons of this lady with regard to Eusebio Yuson?

Buenacamino: I object to any statement made by the accused Emilio Valdez to the witness, under the rule that such statement would be a precedent that it would be very dangerous to permit to be established in connection with this kind of testimony, since the accused can always manufacture this class of testimony.

The Court: The witness may reply, bearing in mind to make no statement regarding what his client has said to him.

A. All the family of Valdez have been satisfied.

Buenacamino: I ask that this answer be stricken from the record, as it is not an answer to the question.

The Court: Strike the answer from the record, because it is not responsive.

Chicote (continuing):

241 Q. State categorically if you know or not what was the state of feeling of the Valdez family and of Andrea Reyes in regard to this litigation?

A. I know.

Q. How do you happen to know it, and what is it that you know, as to the state of feeling of this family of Andrea Reyes, of Emilio Valdez and of the brothers of Emilio Valdez?

A. Well, it was very good in regard to Mr. Yuson; it could not have been better.

Q. From what do you infer that the state of feeling of all of them was good, or was going well?

A. First, by the transaction had between the parties, as occurred in connection with those proceedings; and besides I have been talking with Emilio Valdez himself and with all his family, and they are content with the conduct of Mr. Eusebio Yuson.

Q. Independently of those proceedings in the lawsuit, have you any knowledge of any fact which reveals that Mr. Emilio Valdez or Mr. Eusebio Yuson hate each other or are enemies?

A. There is no hatred or enmity.

Q. No, I ask you if you know any fact or any act of these parties which reveals that they did not have hatred or enmity?

A. I know one fact that reveals that they are not enemies.

Q. What is that fact?

A. I saw on one occasion there, in May, 1911, Eusebio Yuson and Emilio Valdez talking together.

Q. Where were they talking?

A. There at the cockpit in San Miguel, because I was there with Emilio Valdez, and saw them talking together; they were seated together, and shook hands.

242 Q. Before that date you have mentioned, do you know if Eusebio Yuson, Emilio Valdez or any one of the family of said Valdez had had any lawsuit with Eusebio Yuson?

A. Afterwards there was no lawsuit between them.

Q. Nothing more.

Cross-examination by Mr. Buencamino:

Q. Are you related to Emilio Valdez?

A. Yes, sir.

Q. What is the relationship between you and Emilio Valdez?

A. He is my nephew, because the deceased husband of Andrea Reyes, who was the father of Valdez, was my cousin.

Q. You have taken much interest as much as a relation as an attorney in the case against Emilio Valdez?

A. As an attorney, in the interest of truth and justice, yes, sir.

Q. So much has been your interest that on the day on which the provisional liberty of Emilio Valdez was solicited, you appeared as his attorney did you not?

A. Yes, sir.

Q. Such has been your interest in the defense of the accused Emilio Valdez that even in those days during the trial of this case you have been conferring with the accused Valdez and with his witnesses, have you not?

A. I have talked with some of them.

Q. You have also talked with the accused Valdez have you not?

A. I have talked once or twice with the accused Emilio Valdez.

Q. Such has been your interest in the defense of the accused Valdez that this morning you came in and went out of the
243 courtroom, and the times that you went out of the courtroom you were talking with the witnesses of the said accused Emilio Valdez, were you not?

A. If I met any one of them I was asking them questions and talking with them.

The Court: Have you been present at the hearing of this case in the courtroom of this court?

A. On some occasions I have been here, more this morning than at other times, and when I found the courtroom too warm I went out, and afterwards would come in and go out.

Q. Have you heard the testimony of the witnesses?

A. Not all of them, a part of them.

Q. And did you know that the court had issued an order excluding from the courtroom those who were going to be witnesses, on petition of the parties?

A. I was not here when you issued that order; I only had arrived a long time after the attorneys, so long a time afterwards that when the second witness was giving his testimony I arrived here at that time.

Q. In all, how many declarations have you heard in this case? (Meaning the testimony of how many witnesses.)

A. A part of the other declarations, because I have not been in the courtroom all the time.

Q. As an attorney did you not know that as you were to testify you should have excluded yourself from the courtroom?

A. Your Honor, I was only informed that I was to testify at the noon hour as to this fact, nothing more, because the attorneys were asking me if I had really been the attorney for Andrea Reyes, and I answered in the affirmative.

244 Mr. Southworth:

Q. Are you the attorney for Mr. Emilio Valdez in this case?

A. No, sir.

Q. When you were here in the courtroom this morning, and heard the testimony of the witnesses here, when you left the courtroom did you inform any person regarding the testimony given by those witnesses here?

A. No.

Mr. Buencamino:

Q. But you were attorney for Emilio Valdez at one time in this case?

A. I appeared in the petition requesting the liberty of the accused under bond, yes.

Q. Nothing more.

Mr. Chicote: The defense present attorney Pedro Carmen as a witness.

The Court: The court hereby gives notice that it cannot admit Mr. Pedro Carmen as a witness because he has been present since the beginning of this case, and he was and is at present attorney de oficio for the defense, and it does not appear proper for an attorney to testify as a witness under these circumstances.

Mr. Southworth: This rule of exclusion is not applicable to the court, nor to the officials of the court and the prosecuting attorney. This rule is founded on common sense. If the attorneys of an accused be excluded while the witnesses are giving their
245 testimony, all defense would be entirely useless. If the clerk or the stenographer and a witness in the case would have to retire from the courtroom during the presentation of the testimony the court proceedings would necessarily be ineffective, and in this way legal procedure establishes as a rule that the attorneys for the defense, as well as the court officials, need not retire under this exclusion rule; I wish to state to the court that this is the rule, that the attorneys in a case, as well as the court officials, do not come under this rule of exclusion.

The Court: Good! The witness may testify.

Statement of Pedro Carmen.

This witness, being first duly sworn, stated his name is Pedro Carmen, married, 38 years old, lawyer, and resident of San Ysidro, Nueva Ecija Province, P. I.

Direct examination by Mr. Chicote:

Q. Do you know Andrea Reyes and Emilio Valdez?

A. Yes, sir.

Q. Did you know Eusebio Yuson?

A. Yes, sir.

Q. Do you have knowledge of any question regarding lands that existed between the family of Eusebio Yuson and the family of Emilio Valdez?

A. Yes, sir, and it is covered by cases Nos. 248 and 254.

Q. Do you know how that litigation was terminated between both parties?

Mr. Buencamino: The record would be the best evidence.

246 Mr. Chicote (continuing):

Q. Whom did you represent in that litigation, if anyone?

A. The deceased, Eusebio Yuson.

Q. Are you a relative of any of the parties in that litigation?

A. I am not directly related to any of the parties.

Q. Do you know if on the occasion of this litigation, or as a consequence of said litigation, the state of feeling between the parties was aggravated; was converted into hatred or rancor between them?

Mr. Buencamino: Only to refresh Mr. Pedro Carmen's memory I must state that in that litigation he was attorney for Eusebio Yuson.

The Court: And now he is attorney for Emilio Valdez.

Mr. Chicote: By appointment of this court.

The Court (addressing witness): I call the attention of the attorney (witness) that he may answer if he so wishes, even though by so doing he might—perhaps—be guilty of a violation of professional ethics.

A. What I can say with regard to this affair is that the written agreement had come to me already finished, and I did nothing more than to examine it and ask my client regarding it and afterwards to sign it; I did nothing more than that.

Mr. Chicote:

Q. After that affair did you intervene in any other affair between those same parties?

A. I do not remember at this time anything more than these two (indicating the cases Nos. 248 and 254).

Q. Nothing more.

247

Statement of Antonio Liuag.

This witness, being first duly sworn, stated his name is ANTONIO LIUAG, 29 years old, married, is a laborer, and a resident of Gapán, Nueva Écija Province, P. I. (A. Gempezao, interpreter.)

Direct examination by Mr. Miranda:

Q. Did you know Eusebio Yuson?

A. Yes, sir.

Q. Have you had knowledge of his death?

A. Yes, sir.

Q. Do you know when that occurred?

A. Yes, sir.

Q. When?

A. Sunday, March 17th.

Q. Do you know what caused his death?

A. Yes, sir, I know from hearsay.

Q. What caused his death?

A. It is said that he was shot.

Q. Did you hear the shot?

A. I heard it.

Q. Where were you when you heard it?

A. I was behind the church.

Q. What were you doing there?

A. I was going to my house.

Q. From where were you coming?

A. From the house of Emilio Valdez.

Q. What did you do in the house of Emilio Valdez?

A. I went there because he was with me when we came from the east.

Q. Did you go into the house of Emilio Valdez?

A. No, sir.

Q. You bid him farewell in the street?

248 The Court: That question is very leading.

Mr. Miranda:

Q. From where were you coming when you were going with Emilio Valdez toward his house?

A. We were proceeding from Ima's house.

Q. Who is that Ima?

A. It is a nickname for Liuag.

Q. Were you in the house of that lady?

Mr. Buencamino: I object to the question because it is leading.

The Court: Objection sustained.

Mr. Miranda:

Q. Why do you say that you and he were proceeding from the house of Liuag?

A. Yes, sir.

Q. Why do you say that?

A. Because I there saw Emilio Valdez and Miguel Liuag.

Q. Were you in that house?

The Court: It is the same question that has been overruled; therefore, this question is also overruled.

Mr. Miranda:

Q. Where were you when you saw Emilio Valdez in the house of Imá Liuag?

A. I came from the east carrying fish, because I then came from where I had been fishing.

Q. Continue telling all that you saw.

Buencamino: I object.

The Court: Make your question concrete.

249 Miranda (continuing):

Q. State the place where you were when you saw Emilio Valdez in the house of Imá Liuag.

A. I was passing in front of Ima Liuag's house, and I saw them in the window.

Q. Where were you going?

A. I was retiring to my house from the fishery.

Q. And how did you happen to be accompanied by Emilio Valdez from the house of Imá Liuag to the house of the former?

A. He saw my basket of fish, and asked me if I had caught many fish, and I told him yes.

Q. What else?

A. And I offered him some saying "do you wish a part of them?"

Q. And what did he answer?

A. And he answered me yes.

Q. And afterwards?

A. After that I went directly to my house, dressed myself, had supper, and returned there again carrying the fish in a paper.

Q. Where did you return carrying the fish?

A. To the house of Imá.

Q. What did you do there?

A. Upon arriving there I paid my respects to the lady of the house.

Q. How long were you there?

A. Only a moment.

Q. And afterwards what did you do?

A. The three of us departed.

Q. Who?

250 A. Miguel Liuag, Emilio Valdez, and I.

Q. And in what direction did you three go?

A. Miguel Liuag retired to his house; I and Emilio Valdez went in the direction of his house because I was ashamed to give him the fish; that is why I took those fish to his house.

Q. What was the hour when you passed in front of the house of Imá, coming from the fishery to go to your house?

A. It was surely 6.

Q. At what hour did you arrive at the house of Imá, coming from your house?

A. Close to 7, because I had already had supper.

Q. And at what hour, approximately, did you leave Ima's house with Emilio Valdez for his house?

A. 7:20 or 7:25.

Q. How many shots did you hear that night?

A. At first one shot, and afterwards another one; there then followed 4 or 5; I do not remember.

Q. How much time elapsed from the time you left Emilio Valdez in his house until you heard the first shot?

A. Only a moment.

Q. What is the distance, approximately, that you covered from the house of Emilio Valdez to the place where you heard the first shot?

A. I think from this spot where I am seated to that corner (indicating toward the east).

Q. What corner?

A. That corner of the street that leads in the direction of the house of Miranda (a distance of about 150 meters, by agreement of the parties).

Cross-examination by Mr. Buencamino:

Q. Did you say that you live in Gapán?

251 A. Yes, sir.

Q. And on that occasion, March 17th, where were you living?

A. I live in Gapán.

Q. Do you say also that you are married?

A. Yes, sir.

Q. In what suburb of Gapán is your house?

A. In the suburb of San Lorenzo.

Q. Is it not true that at that time your house in Gapán was situated at a place called "Tambo"?

A. No, sir.

Q. And is it not true that your house now in the municipality of Gapán is situated at the same place called "Tambo"?

A. It is not there.

Q. Is it not true that your wife lives at the place called "Tambo"?

A. In the house of my mother-in-law.

Q. And on March 17th is it not true that your wife was living also with your mother-in-law or father-in-law in Tambo?

A. Yes, sir.

Q. Can you tell us what is the distance from Tambo to the house of Imá Liuag?

A. Distant—I cannot calculate it.

Q. Is it not true that the distance is much greater than the distance from this courtroom to the house of Imá Liuag?

A. I cannot affirm it because I do not know if it is true or not.

Q. Why? Have you never been in Tambo in the house of your wife?

A. I have been there.

252 Q. And why can't you, therefore, calculate if the distance between that house and the house of Imá Liuag is more or less the distance from this government building to the house of Imá Liuag?

A. Due to the fact that when I come here I come in a carromata (two-wheeled vehicle), and when I go there I travel on foot.

Q. When you go there, and on foot, how long does it take you to walk from the house of Imá Liuag to the house of your mother-in-law in Tambo?

A. To the house of my mother-in-law?

Q. You say that you came from fishing when the first time you passed in front of the house of Imá Liuag?

A. Yes, sir.

Q. And you also say that you are accustomed to go on foot, is it not true, or are you accustomed to go in a carromata?

A. I go on foot.

Q. And from where had you come fishing?

A. From the river of Gapán.

Q. Is that river very far from the house of Imá Liuag?

A. It depends; if you wish to go near it is only there in front, but if you wish to fish farther away it would be in the same river.

Q. And at what hour did you go out to fish on that day?

A. I went surely at 10 o'clock.

Q. In the morning?

A. Yes, sir.

Q. And were you fishing all the morning until the noon hour?

A. Yes, sir.

Q. And you retired to your house at 3 or 4 o'clock?

A. I was there until about dusk.

253 Q. By that you mean 3 or 4 o'clock?

A. No, between 5 and 6, about.

Q. And you were accompanied by one Tito?

A. No, sir.

Q. Did you not see that Tito that afternoon?

A. In the house of Imá I saw him when I went up into the house.

Q. Where did you see Tito, in the lot or yard talking with Miguel Liuag?

A. I was inside, and I only saw him outside.

Q. Did you also say that you were in that house a little while?

A. Yes, sir.

Q. How long, more or less?

A. Some 15 minutes.

Q. What did you do during that time?

A. Nothing; Miguel Liuag was talking with Emilio Valdez regarding the elections.

Q. And you joined in the conversation?

A. I only heard Miguel say "this is a reliable man," referring to me.

Q. And you say that when you passed in front of that house the first time you were going on foot in the direction of your house?

A. Yes, sir.

Q. And when you returned from your house you came also on foot?

A. Yes, sir.

Q. At that time, or on March 17th, were you living with your wife, or were you and she on bad terms?

A. I was not there; I did not remain there.

Q. I ask you if you were then living with your wife, or not?

254 A. I was not living with her.

Q. Are you now living with your wife, or not?

A. Not now.

Q. How long has it been that you have not been living with your wife?

Chicote: I believe that the question is going into the private life of this witness, and is improper on cross-examination.

The Court: The witness may answer.

A. I was only looking for her there.

Buencamino (continuing):

Q. So that from the time of your marriage you have not lived constantly with your wife, but that you have visited her from time to time?

A. Before she lived with me in Gapán.

Q. Do you live in Gapán in your own house, or with whom do you live?

A. In the house of my nieces.

Q. Who are your nieces with whom you live?

A. Daughters of my sister.

Q. What are their names?

A. Clemencia Tinauin and María Tinauin.

Q. Do they not live with their mother?

A. They are orphans.

Q. But are those two single, or married?

A. Single.

Q. Did you see those two on the night to which you refer?

A. I have seen them.

Q. When you returned from fishing, or when did you return from the house of Emilio Valdez?

255 A. When I returned from fishing and when I returned from the house of Valdez.

Q. How long have you been married?

A. Some time; I believe 10 years.

Q. Did you say that you heard only one shot, or did you say that you heard several shots?

A. At first one, afterwards another, and afterwards I do not know if it was 4 or 5, because I then started to leave rapidly.

Q. Is it not true that you remember perfectly the date and all the circumstances of that night because your memory has been refreshed by other persons?

A. We were talking of that.

- Q. Who are those that were talking of that?
A. Miguel, Ana Lim, daughter of Imá.
Q. And who else did you see that night in the house of Imá?
A. Emilio Valdez, Miguel Liuag, Tito and Imá.
Q. Are they the only persons whom you saw that time in that house?
A. Yes, sir.
Q. Before that afternoon what was the last day that you were with Emilio Valdez?
A. Less than a week, but I cannot fix the time.
Q. And after that afternoon did you see Emilio Valdez again?
A. I saw him there with Miguel Liuag.
Q. When was the first time you saw Emilio Valdez after that afternoon?
A. I have seen him always.
Q. How many days after that day did you see Emilio Valdez again?
A. I do not remember.
256 Q. But was it some days after that time when you saw each other again?
A. I do not remember that.
Q. Do you not remember having seen Emilio Valdez after that occasion?
A. I have seen him, but only I do not remember the day.
Q. You remember the day of the elections?
A. I remember.
Q. And that was a notable day in the town?
A. That is a question of memory; I do not know what to answer because I do not understand it.
Q. But you remember election day?
A. I do not remember, only approximately.
Q. Did you not vote at the elections?
A. Yes, sir.
Q. Do you not remember that day?
A. I remember.
Q. It was a memorable day for you and for the people?
A. Yes, sir.
Q. Do you remember the day when Emilio Valdez was arrested?
A. If I am not mistaken it was at the end of May or in June.
Q. You remember the occasion perfectly well; it is that to which I refer.
A. I remember it because we were discussing it in our conversations, and many referred to it.
Q. That is to say that it was discussed much among yourselves, especially among your friends and those of the party of Emilio Valdez?
A. We were not discussing that.
Q. Were you not talking, the intimate friends and the partisans of Emilio Valdez, regarding the latter's arrest?
257 A. Yes, sir, it was being discussed by us.
Q. Do you remember, then, the date when Valdez was arrested?

A. The date itself; I do not know if it was the end of May or the first of June.

Q. Which one of the last days of May or what day in June was Emilio Valdez arrested?

A. I do not remember.

Q. Do you remember the day when Mr. Valdez was released on bail?

A. I do not remember.

Q. Were you not discussing among yourselves, among the friends and partisans of Emilio Valdez, the fact that he had been granted his liberty under bail?

A. No, sir.

Q. You did not see Emilio Valdez the day he was given his liberty under bond?

A. No, sir.

Q. Were you here in this court the first day of the case?

A. No, sir.

Q. Do you know when Emilio Valdez was arrested again?

A. I have heard from hearsay.

Q. What day was that?

A. I do not remember.

Q. That is all.

Miranda: You said that coming or proceeding from the fishery and carrying fish you passed in front of the house of Imá and later went to your house?

A. Yes, sir.

258 Q. Now, I ask you what is the distance from that house of Imá to your house?

A. There is only one house in between.

Buencamino: Do they call the suburb San Lorenzo or San Vicente where the house of Imá is?

A. They call it San Lorenzo.

Q. You live in the house alongside the house of Imá?

A. I live in the house of my nieces.

Q. But alongside the house of Imá?

A. Alongside the house of Anamías.

Q. How many houses are there between the house where you live and the house of Imá?

A. Three only: Imá's house, Anamías' house, and the house where I live.

Q. How much time elapsed from when you passed in front of the house of Imá the first time until you returned near there, an hour?

A. I believe it was not an hour.

Q. Did you not say that when you passed by there it was between 5 and 6?

A. Yes, sir.

Q. Did you not say that you entered the house of Imá there about 7 o'clock?

A. Yes, sir, it was certainly near 7.

Q. To one of the questions asked you, you answered that Liuag had said to Emilio Valdez "this is a reliable man," referring to you; did he mean by that that you were a good partisan of theirs?

A. No, sir, but that they had confidence in me, and that I would not separate myself from the political party in the elections.

Q. Nothing more.

259

Statement of Claudia de Guzman.

This witness stated her name is Claudia de Guzman, 40 years of age, married, a land owner and a resident of the suburb of San Vicente, Gapán, Nueva Écija Province, P. I. (A. Gempezao, interpreter).

Direct examination by Mr. Miranda:

Q. Do you know Eusebio Yuson?

A. Yes, sir.

Q. Do you know Perfecta de Guzman?

A. Yes, sir.

Q. Is there a house interposed between the Guzman house and is your house situated in the suburb of San Vicente?

A. To the west of Perfecta de Guzman's house.

Q. At what distance?

A. There are two lots in between.

Q. Is there a house interposed between the Guzman house and your house?

A. Our house sets back from the street.

Q. And the question: is there a house intervening between your house and that of Perfecta de Guzman?

A. Florentino García's house.

Q. Who is that Florentino García?

A. There he is (pointing out the said Mr. Florentino).

Q. What people live in that house of Florentino García?

A. His sons.

Q. What are their names?

A. Fernando, Candin.

Q. Is that Candin a man or a woman?

A. A man; his name is Candido.

Q. Do you remember the night that Eusebio Yuson was killed by a shot from a shotgun or a rifle?

A. We heard shots.

260 Q. Who heard them?

A. We: I and my sons.

Q. Where were you when you heard the first shot?

A. We were in our house.

Q. How many shots did you hear?

A. First I heard one; another followed, and after those two first shots we went outside, I and my sons.

Q. And what happened afterwards?

A. When we were outside the shots were repeated.

Q. How many shots?

A. Four successive shots.

Q. What time intervened then? Was there a longer interval between the first and second shots than between the first and the last shots?

A. There was more of an interval between the last four than between the two first shots.

Q. How long a time do you calculate there was between the first shot and the second one?

A. Our house is small; it is not so long, and I—upon hearing the first shot—went outside, but I had scarcely arrived outside when I heard other shots.

Q. Do you know who fired those shots, from the first to the last?

A. No.

Q. Do you know from where those shots were fired?

A. I calculate that I heard those shots east of our house; toward the stone house.

Q. Whose is the stone house?

A. Toward the house of Eusebio Yuson.

Q. That is all.

Buencamino: I have no questions to ask.

261 ENGRACIO NOLAZCO, a witness for the defense, was recalled under his former oath.

Mr. Buencamino: To prevent more loss of time, and without admitting the competency of this evidence, we admit that Mr. Gatmaitan mentioned in case No. 535 of the Court of First Instance of Nueva Ecija, accused and convicted of the crime of theft, is the same Gatmaitan who has testified here as a witness; but we object to that testimony because it does not tend to refute anything, and is incompetent, irrelevant, and immaterial.

Mr. Chicote: We then present the actual complaint in this cause No. 535, offering in evidence only said actual complaint, page 21, and the judgment rendered by the Supreme Court in this same case, pages 31 to 34, including the certification of the sentence.

Mr. Buencamino: We would like to know the object of this evidence.

Mr. Chicote: In order to prove what led up to this affair.

Mr. Southworth: If the object in presenting these records were to prove the falsity of Gatmaitan's testimony it would be necessary that he should read them in order that they might be presented to prove the falsity of the testimony, but this is not the object desired. We wish to present them under the provisions of the Code of Civil Procedure of these Islands, which authorizes the presentation of a sentence of conviction of any witness who testifies in a case for any crime; and it is one of the provisions provided

262 in the Code of Civil Procedure to disprove the veracity of the witness. The witness has testified to important and material facts against at least one of the accused, and the court has a right to know if that witness has been convicted under the laws of

the Philippine Islands. It is what the Code of Civil Procedure provides as a means to impugn the veracity of a witness.

Mr. Buencamino: Understanding, your honor, that the object of this evidence is to impugn the character and the truthfulness of this witness, we should be permitted to present evidence regarding the character and reputation of said witness in the community where he lives.

Mr. Chicote: Yes, we invite the prosecuting attorney to present such evidence.

The Court: Yes, the court has a right to know; but the exhibits presented by the defense may be admitted in evidence, and marked with corresponding numbers (Exhibit 10).

Statement of Francisco Amante.

This witness, being first duly sworn, stated his name is Francisco Amante (defendant), 46 years of age, a widower, a baker by profession, and a resident of Gapán, Nueva Ecija, P. I. (A. Gempezao, interpreter).

Direct examination by Mr. Miranda:

Q. Do you know Victor Marcelo Robaya?

A. Yes, sir.

Q. Have you received from this individual any letter addressed to yourself for another person?

263 A. No, sir, none.

Q. Have you any firearm?

A. Yes, sir.

Q. What kind of a firearm?

A. Of two barrels.

Q. Is it the shotgun that you have seen here in this courtroom at these sessions?

A. It is described in the license.

Q. Is this the shotgun (exhibiting to the witness the shotgun, Exhibit G).

A. My shotgun is that kind of a gun, but I do not know if it is my shotgun.

Q. Have you a license for this shotgun?

A. Yes, sir.

Q. Do you know where this shotgun was bought?

A. I ordered Emilio Valdez to buy it.

Q. Where have you kept this shotgun since it was purchased?

A. In the warehouse, and during working days it is in the seed-field, but when not working in the field it is in the village, because it is at the disposition of my principal.

Q. Have you had knowledge of the death of Eusebio Yuson?

A. On Monday when I arrived.

Q. From where did you arrive?

A. I was in Manila.

Q. When did you depart for Manila?

A. At 8 a. m.

Q. On Sunday?

A. Yes, sir.

Q. From where did you start when you set out for Manila?

A. From the seed-field.

Q. Where was the shotgun when you set out from the seed-field for Manila?

264 A. It was in the warehouse.

Q. Where did you sleep the preceding night, Saturday?

A. On the thrashing-floor.

Q. Saturday night?

A. Yes, sir.

Q. Thrashing-floor of what?

A. The rice thrashing-floor.

Q. Where was the shotgun that Saturday night?

A. In the warehouse.

Q. On Saturday, during the day, did you use the shotgun?

A. No, sir.

Q. How many months were you at the warehouse during that time?

A. From the milling time and the gathering of the rice.

Q. From the time you were at the warehouse, from the time the milling began, until you went to Manila on that Sunday, did you return at any time to the town of Gapán?

A. Yes, sir, I would go back sometimes.

Q. When was the last time that you returned to the town of Gapán before the death of Eusebio Yuson?

A. When I went to Manila.

Q. When you came from the seed-field on that Sunday to go to Manila, did you carry anything?

A. I carried nothing.

Q. On any occasion did you invite Mateo Arcilla to accompany you in a carromata (two-wheeled vehicle drawn by a horse) from the warehouse to any other place?

A. No, sir.

Q. Nothing more.

Cross-examination by Mr. Buencamino:

Q. Did you say that when you left the warehouse to go to Manila you carried nothing?

265 A. Nothing.

Q. You carried nothing when you went to Manila?

A. No, sir.

Q. From the warehouse to the town?

Mr. Chicote: We ask that Mr. Buencamino be more accommodating.

The Court: The witness may answer.

A. Yes, sir, I was carrying something.

Mr. Buencamino (continuing):

Q. On arriving at Manila did you go — the Society Convent to deliver a suit-case?

A. Yes, sir.

Q. It is true is it not that the superior (mother superior) issued to you a receipt?

A. Yes, sir.

Q. Was that the only time that you took a suit-case to the Sociedad Convent (Society Convent), or had you taken a suit-case also there on any other occasion?

A. No, sir, it is the only time.

Q. Before that time do you know who took the suit-case or the clothing of Mariquita Valdez to the Society Convent?

A. No, sir.

Q. How is it that you are the one who took the suit-case that day?

A. Because they ordered me to do so.

Q. Who is it that ordered you to take it, the mother of Mariquita?

A. Mariquita, because she was there; she had not yet departed.

Q. So that Mariquita was in Gapán on Sunday morning?

A. Yes, sir, she was there.

266 Q. Was not Mariquita Valdez on that Sunday in the warehouse when you left there?

A. She was not there.

Q. That is all.

Mr. Southworth: State to the court whether or not you know of any motives on the part of any one who might have wished the death of Eusebio Yuson.

A. I know nothing about that.

Q. Nothing more.

Statement of Emilio Valdez.

This witness, the accused, stated his name is Emilio Valdez (after being duly sworn), 30 years of age, married, a land owner, and a resident of the municipality of Gapán, Nueva Écija Province, P. I.

Direct examination by Mr. Southworth:

Q. Who is your mother?

A. Andrea Reyes.

Q. State to the court whether or not it is true that your mother and Mr. Eusebio Yuson had had a quarrel with regard to land.

A. A quarrel or a difference was not brought here in the court. They did not have any difference; they had a lawsuit.

Q. Yes, was there any lawsuit or litigation between your mother and Mr. Eusebio Yuson?

A. Yes, sir.

Q. When was that?

A. I almost remember what Mr. Santos has just said here; in 1907, I believe.

267 Q. What was that law-suit?

A. Regarding land.

Q. What area or extension has that land?

Mr. Buencamino: I object to the question because the record states that.

(Question withdrawn by Mr. Southworth.)

Q. State to the court whether or not that question was settled in a friendly manner between you, your mother, and Eusebio Yuson.

A. Yes, sir.

Q. To the satisfaction of the parties?

A. Yes, sir; my mother so informed me, because I was not present.

Q. State to the court whether or not it is true that you on any occasion had had resentment against Mr. Eusebio Yuson on account of that law-suit?

A. No, sir.

Q. State to the court whether or not it is true that your mother and Mr. Eusebio Yuson had a dispute in regard to a canal.

A. I do not know, because when I was a bachelor I did not attend to our property or interests, and the only ones who did so are my mother and Francisco Amante; that is why I do not know anything more than I am at present hearing in the courtroom.

Q. When was the first time that you took any part in the business affairs of your mother?

A. When I was married, then I changed my way of living, because then a married man always must attend to business.

Q. When were you married?

A. Last year.

268 Q. State to the court if you know Juan Gatmaitan.

A. I do not know him; I know him by name only, but I do not know him personally.

Q. State to the court whether or not you had a conversation with Mr. Gatmaitan during the last harvest, during which conversation you stated to him that you wished to be his friend, or that he be a friend of yours.

A. I have never seen that man.

Q. State to the court whether or not you had a conversation with Mr. Gatmaitan in your house, shortly before the death of Eusebio Yuson, in which conversation you proposed to give him P1,000 to kill Eusebio Yuson?

A. If at no time I have seen him (Gatmaitan), how is it possible I could have said that in my house?

Q. State to the court whether or not you were with Mr. Gatmaitan during the afternoon or the night of the occurrence, when Eusebio Yuson was killed.

A. In my life I have never been with Juan Gatmaitan.

Q. State to the court whether or not you delivered a shotgun to Mr. Juan Gatmaitan at the garden or field of your house or at any other spot.

A. No, sir.

Q. State to the court whether or not you had any conversation

with Mr. Lucas Figueroa with regard to the assassination of Mr. Eusebio Yuson.

A. No, sir.

Q. State to the court if on any occasion you proposed to give Mr. Lucas Figueroa P20 if he would give you information regarding when Mr. Eusebio Yuson returned in the train from Manila, or for any other information with regard to said Mr. Yuson.

A. I know nothing about it because I do not know that
269 man; he is a man whom I have seen when we were arrested in the house of the captain.

Q. State to the court whether or not you saw Mr. Lucas Figueroa on the day of the occurrence, or if you had any conversation with him at any time.

A. No, sir, at no time.

Q. Do you know Mateo Arcilla?

A. Yes, sir; he is my tenant.

Q. State to the court whether or not you had on any occasion any conversation with Mr. Mateo Arcilla with regard to the assassination of Mr. Eusebio Yuson.

A. No, sir.

Q. State to the court if on the Saturday preceding the day on which Mr. Eusebio Yuson was shot you delivered a letter to Mr. Victor Robaya to be delivered to Mr. Francisco Amante.

A. No, sir; I have delivered no letter.

Q. State to the court whether or not you asked Mr. Lucas Figueroa, Mateo Arcilla, or Juan Gatmaitan to aid you in killing Eusebio Yuson, or if you on any occasion have offered money for his assassination.

A. No, sir.

Q. State to the court if on any occasion you had any object, intention, or motive for the killing of Mr. Eusebio Yuson.

A. Absolutely none.

Q. State to the court where you were about 5 o'clock on the afternoon of the day on which Eusebio Yuson died.

A. In the house of the aunt of Miguel.

270 Q. Whom did you meet in that house?

A. I found there Miguel Liuag, the owner of the house, one Tito who was looking after the roosters of said Miguel, and Antonio Liuag was also there.

Q. From where did you come when you went to that house?

A. I came from my house.

Q. How long a time were you in your house that day?

A. I was in my house all day until 3:45 at which time the 4 o'clock train passed, perhaps, when I went to the house of Liuag.

Q. How long a time were you in your house continually until you went to the house of Liuag?

A. All day.

Q. All day?

A. I was in the house until a little after 4.

Q. After 4 o'clock where did you go?

A. I went to my aunt's house..

Q. Who is your aunt?

A. Eduvías Reyes.

Q. Did you go to your aunt's house?

A. No, sir.

Q. How does it happen that you did not go to your aunt's house?

A. Because I passed the house of Miguel Liuag's aunt.

Q. How did you go on that occasion, in carromata, walking, or how?

A. Walking.

Q. State to the court whether or not you were taking a ride in a carromata that afternoon or that night.

A. No, sir.

Q. State to the court whether or not you went to the town with Juan Gatmaitan, and there invited him to enter your carromata to take a ride with you.

A. No, sir.

Q. How long were you in Liuag's house?

A. Approximately 2 hours.

Q. Where did you go after leaving the house of Liuag?

A. To my house; to my house only.

Q. Did you go alone or were you accompanied?

A. Antonio Liuag accompanied me.

Q. After you arrived at your house did you hear any extraordinary occurrence in that neighborhood?

A. Yes, sir.

Q. What did you hear?

A. Shots.

Q. What time elapsed after you arrived at your house until you heard the shots?

A. I had scarcely entered the hall of my house when I heard the shots.

Q. State to the court whether or not you had been in the house of Eusebio Yuson, or in the street or at any spot near the house of Eusebio Yuson that night?

A. No, sir.

Q. State to the court whether or not that you saw Mateo Arcilla, Lucas Figueroa, or Juan Gatmaitan in the house of Eusebio Yuson that night.

A. No, sir.

Q. State to the court whether or not you had a conversation with one Braulia Arcilla regarding Mateo Arcilla or regarding any other matter relating to this affair.

A. Yes, sir, I talked with her regarding Mateo Arcilla.

Q. State to the court what that conversation was?

A. I sent for Braulia and Mariano Súniga, because this
272 Mariano had stated to me that Alfonsa Arcilla said to him that she had visited her brother Mateo Arcilla in Cabanatuan, and that was what I was asking Braulia because Alfonsa said to Mariano Súniga that her brother had been arrested by the Constabulary; that they had not permitted him to sleep for one night and one day, and I asked Braulia Arcilla if it was true what Mariano

Súniga had told me, and the said Braulia replied that it was true because her sister Alfonsa came from Cabanatuan, and her brother Mateo Arcilla was arrested by the Constabulary; and I then instructed Braulia to have her sister Alfonsa come and talk with me if it is true that he was arrested, and she said yes, but I have been waiting until now, but she has not come to my house.

Q. Have you heard the testimony given here in court by Mrs. Braulia Arcilla?

A. Yes, sir; I have heard it.

Q. Is it true what she declared here?

A. Not all of it is true; that part of it that I sent for her is true; but that part where she said that I gave her or caused her to give, I do not know what, but I believe it was a letter, I do not know anything about that because it is not true.

Q. I show you Exhibit 11, I believe, of the defense which alleges to be a receipt of Alkan & Company for a shotgun and 200 cartridges. State to the court if on any occasion you have seen it.

A. Yes, sir, I have seen it, and I am he who bought that and which they gave me.

Q. Where did you see it? State the circumstances under which you had that.

273 A. Yes, I myself went to the establishment to purchase it personally, and that is what Mr. Alkan gave me.

Q. State if on that occasion or on any occasion you bought cartridges of any other store except that of Alkan & Co.?

A. No, sir, because one cannot purchase cartridges without the permission of the Constabulary.

Q. Have you requested permission of the inspector of Constabulary that he permit you to buy other cartridges than those mentioned here?

A. No, sir.

Q. I show you Exhibit E of the Government which is the wad of a shotgun, and ask you to state if on any other occasion you have seen it, or if those are the wads of the cartridges belonging to the gun of Francisco Amante?

A. Those are not the cartridges of Francisco Amante; I have never seen that.

Q. State to the court if on any occasion you have bought cartridges from Richter & Company, or if you have acquired them in any other way, or if you have had in your possession cartridges that came from the firm of Roensch & Co.

A. No, sir.

Mr. Southworth: I ask that this receipt be admitted as a part of the testimony of this witness, which receipt we present as evidence to prove that those are the only cartridges that the witness has bought, and that he has purchased them in the store of Alkan & Co., and that it corroborates the testimony of said witness.

Mr. Buencamino: If it is to demonstrate that the receipt proves that the witness has purchased nothing except from Alkan & Co., we object; but if it is only in regard to the witness there is no objection.

274 The Court: The exhibit is ordered admitted as a part of the testimony of the witness.

Mr. Southworth (continuing):

Q. State to the court if it is true that he delivered to you personally that receipt and the cartridges both, as well as the shotgun.

A. Yes, sir.

Q. Nothing more.

Cross-examination by Mr. Buencamino:

Q. Have you personally had a shotgun in your possession under license?

A. I personally, yes; I had it in those times.

Q. No, at what time have you had a shotgun under your control legally?

A. Yes, sir, I remember that I have had it.

Q. When did you have a shotgun in your possession?

A. In 1905.

Q. That shotgun which you had in your possession; was it a 12-caliber shotgun?

A. Yes, sir.

Q. In which cartridges are used of the same kind as those used in this shotgun here, Exhibit G?

A. Yes, sir.

Q. How long did you have in your possession under license that shotgun?

A. I did not have it more than 3 years.

Q. So that you had it until the year 1908?

A. Yes, sir.

Q. Is this the same shotgun, Exhibit G, that you then had?

A. No.

275 Q. And that shot gun which you had did you use it for hunting?

A. Yes, sir.

Q. You, like all hunters in your neighborhood, frequently borrowed or loaned cartridges to other hunters, did you not?

A. No, sir.

Q. You did not do that?

A. I did not do that.

Q. But you know if that is the custom of the hunters or possessors of shotguns in this province?

A. I do not know if it is the custom.

Q. Where did you buy, Mr. Valdez, that shotgun that you had in 1905 and 1908?

Mr. Southworth: I object to the question because it is immaterial. The Court: The witness may answer as preliminary.

Mr. Buencamino (continuing):

Q. And is it not true that you have bought also cartridges for that shotgun on various occasions?

A. I cannot state if I have bought on those occasions.

Q. Do you not remember if you went to buy cartridges for that shotgun?

A. Yes, since then I have bought.

Q. On various occasions?

A. Yes, sir.

Q. But you do not remember where you bought those cartridges?

A. From Roensch or Richster.

Q. Do you say that was approximately a year ago or not?

A. More or less.

276 Q. Were you then intervening in the administration of the property of your mother?

A. Before, no, sir.

Q. However, you knew regarding the question of the land five years ago?

A. I knew because my mother told me.

Q. You, however, although not administering the lands of your mother until a year ago, went from time to time to your mother's seed-field, did you not, or to the warehouse?

A. Yes, sir.

Q. The fact is that you went frequently to the seed-field and to the warehouse before a year ago?

A. No, sir, I did not go frequently previously to a year ago.

Q. You know that ditch for irrigation utilized by Eusebio Yuson, alongside the railroad?

A. No, sir.

Q. Have you not seen that ditch?

A. Until now, no, because there is no ditch there.

Q. There is no irrigation canal there?

A. No, there is not.

Q. Is it not true that your mother rents from the railroad company a piece of land alongside the right-of-way of the railway in Gapán which is used as a ditch or for the water to pass through?

A. Yes, it is true that my mother rents it, but it is not used as a ditch, but the water of that canal is what we carry there, but there is no such a ditch there.

Q. So that your mother rents that land?

A. Yes, sir.

Q. And she rented it three years ago?

A. I do not know if it is 3 years or 4 years that she has rented it.

277 Q. Neither do you know what occurred in connection with that piece of land?

A. No, sir.

Q. But is it not true that the parcel of land is used as a ditch, or is it a canal for the passage of water?

A. I know nothing; what I know is that from that canal all the water is taken.

Q. It is a reservoir for water then?

A. Yes, there is water there, but one cannot say it is a reservoir.

Q. And you do not know if your mother had had any dispute with Eusebio Yuson regarding that parcel of land?

A. No, sir.

Q. Is it true that you have no knowledge as to whether Francisco Amante has bought other cartridges, without your knowledge, under your license? You cannot affirm that?

A. Of course, I do not know if he has presented another request to buy firearms or bullets.

Q. You say that on the night when Eusebio Yuson died you were entering your house when you heard the shots?

A. No, sir.

Q. And what was the fact?

A. When I was about entering, perhaps when I was entering the dining-room of my house I heard a shot.

Q. And is it not true that your mother and other relatives of yours were in the house?

A. No, sir; my mother was in the seed-field.

Q. Who was in your house?

A. My wife, my aunt, a girl and an old woman also were there.

Q. Did you not leave your house that night?

A. Yes, sir, I went out.

278 Q. At what hour?

A. First I ordered my servant to go out to ascertain where those shots were being fired, and my servant did not return, and what I did was to go out, and I saw many people at a corner of the street; then I went there to ascertain what those shots were that I had heard.

Q. As soon as you heard the shots you ordered your servant to find out about them?

A. Yes, sir.

Q. And why did he not return? What reason had he for not returning?

A. He did not return.

Q. And you then followed him, a moment later?

A. Yes, I followed him when he was tardy in returning, and I was very tired of waiting.

Q. What time was it when you were there after leaving your house?

A. I believe it was 8 o'clock or a little after 8 o'clock.

Q. And where were you stationed?

A. I went there to the corner.

Q. What corner?

A. That corner there.

Q. Of Adorable and Yuson streets?

A. No, there where is located the yard of the convent of Gapán.

Q. Who was the first person to inform you of the occurrence?

A. The chief of police, because when my servant did not return I looked out the window and called to those policemen, and afterwards one of the chiefs passed whom I asked "where are you going," and he replied "I am going to Benito's house," and I then said to him "here is my revolver."

Q. You were calling to the policemen who were going to the aid of those where the shooting was?

279 A. Yes, sir; the police or the chief of police can state that.

Q. How long was it after the shot when you made those observations?

A. Upon hearing the shots I went through my house to look out, because my house is not distant more than one house from the municipal building, that is to say, the municipal building is very near my house.

Q. But how long after you heard the shots that you made those cries?

A. Perhaps not more than one minute or two minutes, because upon hearing the shots I at once went inside.

Q. Why, were you outside?

A. I was in the dining-room.

Q. How long was it after the shots that you talked to the chief?

A. Perhaps two minutes had not passed when I saw the chief of police.

Q. So that you heard the shots and immediately went to the front of your house to look out, and upon looking out you cried out, and saw immediately below the chief of police?

A. No, sir.

Q. What then?

A. I saw the chief of police coming.

Q. Regarding that, how long after you heard the shots did you see that chief of police?

A. Some 3 minutes.

Q. So that you were in the dining-room and heard the shots?

A. Yes, sir.

Q. And you went to the front part of your house to look out of the window, and called forth?

280 A. Yes, sir.

Q. And you then saw there the chief of police?

A. I saw him passing.

Q. And you talked with that policeman?

A. Yes, sir.

Q. And who replied to your cries?

A. No one; I had not seen the policemen there.

Q. You did not see the policemen?

A. The chief only.

Q. But when you were crying forth did you see any policemen?

A. No, sir.

Q. In what form were you crying out, Mr. Valdez?

A. "You policemen!, what is going on there?" thus I cried.

Q. But in what tone of voice? In that same tone, or more strongly?

A. In this same tone.

Q. Directing yourself to the municipal building which is in front of your house?

A. It is not in front, sir.

Q. And to whom were you directing those cries?

A. Toward the municipal building.

Q. And what is the distance from your house to the municipal building?

A. It does not measure more than a house.

Q. Do you know if in your tone of voice in giving those cries they could be heard at the municipal building?

A. I think so; they could hear one, and I used all my voice.

Q. With all the strength of your lungs you were crying out?

A. No, sir.

Q. Did you not say that you were using all your voice?

281 A. I did not say that I was calling with all the strength of my lungs.

Q. You were crying at the top of your voice at that time?

A. No, sir, I was not crying out to the full extent of my strength, because I could have called louder, but I believed they could there hear me.

Q. Did any one come out of the municipal building when you called?

A. I did not see any one.

Q. No one replied to your calls?

A. No one.

Q. How long after your cries did you see the chief of police?

A. About 3 minutes, perhaps.

Q. That is all.

Mr. Chicote: We ask the court to suspend this session until to-morrow morning. That will give us time to terminate our evidence.

The Court: Is there any objection from the parties interested?

Mr. Buencamino: None.

The Court: The session is closed until to-morrow morning.

Session of Court on July 12, 1912.

This case having been called again on the morning of this 12th day of July, 1912, for a continuation of the hearing, before
282 the Hon. Ysidro Paredes, Judge, the same parties appeared.

Continuation of Evidence of Defense.

EMILIO VALDEZ was called again to testify as a witness under his former oath, the personal circumstances of which appear in the record.

Mr. Buencamino:

Q. State to the court if you assisted or did not assist in the burial of Eusebio Yuson?

A. No, sir.

Q. That is all.

Statement of Matea Domingo.

This witness, being first duly sworn, stated her name is Matea Domingo, 28 years of age, single, a servant girl and a resident Gapán, Nueva Écija Province, P. I. (A. Gempezao, interpreter.)

Direct examination by Mr. Miranda:

Q. For whom do you work as a servant?

A. In Emilio Valdez's house.

Q. Did you know Eusebio Yuson?

A. Yes, sir.

Q. Do you know if he died?

A. Yes, sir.

Q. Do you know what caused his death?

A. Yes, sir.

Q. What?

A. It is said he was shot.

Q. Did you hear that shot?

A. Yes, sir.

283 Q. Where were you when you heard the shot?

A. I was in the kitchen.

Q. And where was Emilio Valdez?

A. In the dining-room.

Q. In the kitchen of what house were you?

A. In the kitchen of Emilio Valdez's house.

Mr. Buencamino (cross-examination):

Q. Are you still a servant of Emilio Valdez?

A. Yes, sir.

Q. That is all.

Mr. Chicote: We also wish to offer as evidence the complaint formulated in this cause before the Court of First Instance, signed by Capt. Crockett of the Constabulary, and the succeeding information that have been presented, including the last information that appears under date of July 5th; I do not remember exactly what is the date of the other informations, but I believe they are in the record.

The Court: The complaint signed by Capt. Crockett is admitted as Exhibit 3 of the defense.

Mr. Chicote: And forming a part of the information. The informations are: Exhibit 11 is that which appears at page 17 of the same cause, signed by his honor the auxiliary fiscal Antonio Villarreal; and Exhibit 12 is that which appears at page 22 which is signed by the provincial fiscal Mr. Santiago Lucero; and as Exhibit 13 we are going to present the information in the cause of this court, the number of which I do not remember at this moment, against Juan Gatmaitan for this same occurrence.

284 Mr. Buencamino: We should like to ask that the defense inform us why or with what object those exhibits are presented.

sented. If Exhibit 13 is to impugn the character of Juan Gatmaitan it is clearly incompetent under the same rule cited by Mr. Southworth, and by the same section of the law which he has cited the presentation of such exhibits is incompetent.

Mr. Chicote: It has no other purpose than to establish what the prosecution has established regarding the accused.

Mr. Buencamino: I believe that this evidence cannot be admitted on account of being incompetent and immaterial.

The Court (addressing Mr. Chicote): Let us see the information in the case against Gatmaitan.

Mr. Chicote: It is the information in case No. 2093. This information, being the original one, could not be attached in this case, and we ask that the clerk attach a certified copy. Likewise we ask in any one of the documents presented by this same party.

Mr. Buencamino: I object to the admission of those exhibits as incompetent, immaterial and irrelevant, especially Exhibit 13 which is presented to impugn the character and veracity of the witness Juan Gatmaitan, under the sections of the Code of Civil Procedure, since in said code the presentation of a final and conclusive sentence is only permitted for the presentation of evidence regarding the character of the witness.

285 The Court: Exhibit 3 of the defense, which is the complaint signed and sworn to by Capt. Crockett, is the one in which the preliminary investigation of this case started, and I believe that said complaint could be amended, corrected and augmented by the prosecuting attorney once the proceedings were brought before the Court of First Instance.

The information signed by ass-tant prosecuting attorney Villa Real, dated June 21, 1912 (Exhibit 11 of the defense) has never been read to the accused Valdez and Amante; neither has it been sworn to by Mr. Villa Real, but I think it has been amended by the information subsequently presented and signed by prosecuting attorney Santiago Lucero, dated July 5, 1912, which information of Mr. Lucero is the one that was read to the accused, and is the beginning of the present case against Emilio Valdez and Francisco Amante.

I believe there is no necessity of presenting the information, let us call it final, as evidence, signed by said Mr. Lucero, which is Exhibit 12 of the defense, because it is an integral part of this case; and the information presented against Juan Gatmaitan in the case against him, No. 2093, until now has not been sworn to nor has it been read to the accused, and it is susceptible to all the amendments that the complainant might wish to make. The court will therefore admit as evidence the exhibits presented, for such value as they may possess.

Mr. Chicote: We offer also, as Exhibits 14 and 15, the compromise and the record approving this compromise had between Eusebio Yuson and Andrea de los Reyes in civil case No. 248 with reference to the lawsuit regarding lands.

286 The Court: Is it the same compromise to which the witnesses Santos and Carmen have referred?

Mr. Chicote: Yes, sir.

The Court: Admitted

Mr. Chicote: As Exhibits 16 and 17 we offer likewise the compromise and the record affirming it in case No. 254, pages 33 to 35.

The Court: They may also be admitted.

Mr. Chicote: And we close our evidence, asking that copies of those exhibits be attached to the record, to the end that the originals need not be attached to this case

The Court: Very well.

REBUTTAL EVIDENCE OF THE PROSECUTION.

Statement of Joaquín García.

This witness, being first duly sworn, stated his name is Joaquín García, 28 years old, married, a laborer, and a resident of Gapán, Nueva Écija, P. I. (A. Gempezao, interpreter.)

Direct examination by Mr. Buencamino:

Q. State to the court if you know or do not know the accused, Emilio Valdez?

A. I know him.

287 Q. Is he here in this courtroom or not?

A. He is here.

Q. I beg you to indicate to the court who is the accused, Emilio Valdez?

A. There he is (pointing to the accused, Emilio Valdez).

Q. State to the court if you knew or did not know Eusebio Yuson.

A. I knew him.

Q. State to the court if you know if he is living or is actually dead, Eusebio Yuson.

A. He died.

Q. State to the court if you know in what way or in what manner Eusebio Yuson died.

Mr. Southworth: I object to the question as suggestive.

Mr. Buencamino: I withdraw the question.

Q. Do you remember the day of the death of Eusebio Yuson?

A. Yes, sir.

Q. What day of the week was it?

A. Sunday.

Q. State to the court if on that day in the morning, at noon, in the afternoon, at night or at any moment of that day you saw or did not see at any place the accused, Emilio Valdez?

Mr. Ledesma: I object to the question because it is direct and corroborative evidence.

The Court: Objection overruled.

A. I saw him.

Mr. Buencamino (continuing):

Q. State to the court where you saw the accused, Emilio Valdez?

288 A. At the portal of Guillerma Liuag.

Q. Of the house of Guillerma Liuag?

A. Yes, sir, and he was about to leave the portal of Guillerma Liuag.

Q. State to the court what the hour was when you saw him in the act of leaving the portal of the house of Guillerma Liuag.

A. A little after 5 p. m.

Q. State to the court if when you saw the accused Emilio Valdez on that occasion the sun had already set or not?

A. Surely it had not set, because it was no later than a little after 5 p. m.

Q. State to the court where you were when you saw the accused, Emilio Valdez.

A. I was buying cigarettes in the store of Guillerma Liuag.

Q. And you saw that the accused, Emilio Valdez, was in the act of leaving the portal of the house of Guillerma Liuag. Now state if you saw him leave or not?

A. He was leaving to go out.

Q. Do you know where the accused Emilio Valdez was going on leaving?

Mr. Chicote: I object to the question, because the witness has not said that he had gone or that he was going anywhere.

The Court: The witness may answer.

A. On leaving the portal he went in a westerly direction.

Mr. Buencamino: That is all required of this witness.

Cross-examination by Mr. Chicote:

289 Q. What relationship do you bear to Eusebio Yuson or to the family of Eusebio Yuson?

A. I am not related to Eusebio Yuson.

Q. To the family of Eusebio Yuson?

A. His wife is my aunt.

Q. Do you know what time it is at this moment?

A. Yes, sir.

Q. What time is it, more or less?

A. A little after 8 a. m.

Q. When you bought cigarettes in the store of Guillerma Liuag, you saw the watch there?

A. No, sir.

Q. Nothing more.

Statement of Francisco de Guzman.

This witness, being first duly sworn, stated his name is FRANCISCO DE GUZMAN, 40 years old, married, chief of the municipal police of Gapán, Nueva Écija Province, P. I., and a resident of the same town. (A. Gempezao, interpreter.)

Direct examination by Mr. Buencamino:

Q. State to the court if you know Emilio Valdez?

A. I know him.

Q. Is he present in this courtroom or not?

A. Yes, sir, he is present.

Q. Indicate him.

A. There he is (pointing to the accused, Emilio Valdez.)

Q. Do you or do you not know Esuebio Yuson?

A. I knew him.

Q. Is he living or has he died?

A. He is dead.

290 Q. Do you remember the day on which Eusebio Yuson died?

A. Yes, sir.

Q. Do you remember if on that day you heard anything extraordinary or not?

A. Yes, sir.

Q. What did you hear?

A. A shot.

Q. At what hour, approximately?

A. I believe that, according to my calculation, it was at 7:10 p. m.

Q. Where were you when you heard the shot?

A. In the municipal building.

Q. State to the court what you did after you heard the shot.

A. After I heard the shot what I did was to give revolvers to my policemen, and as I heard another shot I ordered my policemen to go in the direction of the place from which proceeded the shot, and what I did afterwards was to give an account of the shooting to the president.

Q. Where was the present when you gave him an account of the affair, in the same municipal building?

A. To the east of the municipal building.

Q. At what place is the municipal building?

A. It is in his very house.

Q. And how long after you heard the second shot was it that you left the municipal building to go to the house of the president?

A. I calculate it was about 2 minutes after I left there.

Q. Upon leaving the municipal building that time state to the court if you did or did not pass in front of the house of Emilio Valdez?

A. I passed in front of his house.

291 Q. State if when you passed in front of the house of Emilio Valdez you saw or did not see Emilio Valdez at the window of his house.

A. The first time that I passed there I did not see him.

Q. You went to the president's house to give him a report?

A. Yes, sir, I told him shots had been fired near there.

Q. Did you have or did you not have then conversation with the president?

A. I had a conversation.

Q. How long were you talking with the president on that first occasion?

A. About one minute.

Q. That is to say—from the president where did you go?

A. I returned to the municipal building.

Q. To return to the municipal building did you or did you not pass in front of the house of Emilio Valdez?

A. Yes, sir, I passed.

Q. Did you see or did you not see on that occasion the accused Emilio Valdez at the window of his house?

A. I had not yet seen him.

Q. Did you or did you not then enter the municipal building?

A. I entered.

Q. How long were you in going from the house of the president to the municipal building when you returned that time?

A. Also more than a minute.

Q. What did you do on arriving at the municipal building that first time?

292 A. By order of my president I ordered a policemen to look around to see if there were any more outlaws.

Q. Did you see at that time in the municipal building a policeman named Paulino Avelino?

A. I saw him.

Q. During all that time since you heard the first shot until you saw Paulino Avelino in the municipal building did you hear any cry or did you not hear any cry from the house of Emilio Valdez?

A. I did not hear any.

Q. Did you or did you not give arms to Paulino Avelino?

A. I gave him arms.

Q. Where did you get that firearm?

A. From the wardrobe.

Q. Did you have to unfasten the bolt of the wardrobe, or not, to get the firearm?

A. Yes, sir.

Q. And how long were you in the municipal building that time until you turned to go out again?

A. More than a minute, surely.

Q. How much longer than a minute were you in the municipal building on that occasion on which you gave the firearm to Paulino Avelino?

Q. Upon arriving there I opened the wardrobe, took out the arma-

ment, delivered it to policeman Avelino, and by that was delayed a little.

Q. From there you went out again from the municipal building, did you not?

A. Yes, sir.

Q. Where did you go?

A. To the president.

Q. Only to the President's house, or where else?

A. To the president's house.

293 Q. That second time that you went to the president's house did you or did you not pass in front of the house of Emilio Valdez?

A. I did.

Q. And did you see on that occasion the accused, Emilio Valdez, at his window, or not?

A. In going out I did not see him.

Q. How long did it take you to go from the municipal building to the president's house that second time?

A. Also more than a minute in going.

Q. Did you talk or did you not talk that second time with the president?

A. I talked with him.

Q. How long were you talking with the president that second time?

A. Less than a minute, surely.

Q. Where did you go from the president's house that second time?

A. I returned again to the municipal building.

Q. That time did you or did you not see Emilio Valdez?

A. I saw him.

Q. Now, how long a time elapsed since you heard the first shot until you saw Emilio Valdez?

A. More or less about 10 minutes.

Q. Do you know whether or not some of those policemen fired shots or not that night?

Mr. Ledesma: I object to the question as immaterial.

The Court: Some of the witnesses for the defense effectively testified to having heard various shots after the first two. This
294 is a fact proven by the defense, and I believe that the prosecution may show that they were not shots fired by the accused, and in that sense the objection is overruled, and the witness may answer.

A. According to what they told me, two of them fired shots.

Mr. Chicote: We ask that the answer be stricken from the record.

The Court: It is so ordered.

Mr. Buencamino: Who are they that told you that?

Mr. Ledesma: That question has no basis if the previous one was ordered stricken from the record.

The Court: Change the question, Mr. Buencamino.

Mr. Buencamino: You, in your capacity as chief of police of the municipality of Gapán, on the night of the occurrence, did you receive or not any official report of any kind from your policemen as to whether or not they fired any shots?

Mr. Ledesma: I object to the question.

The Court: It seems also that that question is hearsay.

Mr. Buencamino: Did you see the firearm of any one of your policemen after you sent them out or not?

Mr. Carmen: I object to the question because it is alternative.

The Court: The witness may answer.

A. I saw it because I am the one who delivered it.

295 Mr. Buencamino (continuing):

Q. When they returned to the station did you or did you not see their arms?

A. I saw them because they were delivered to me.

Q. Did you then see or not that any one of them had been fired?

A. I did not inspect them.

Q. That is all required of this witness.

Mr. Miranda: No cross-examination:

Statement of Fortunato Gonzalez.

This witness, being first duly sworn, stated his name is FORTUNATO GONZALEZ, 38 years old, municipal president of Gapán, Nueva Ecija Province, and a resident of the same town. (A. Gempezao, interpreter.)

Direct examination by Mr. Buencamino:

Q. Do you know Emilio Valdez and Eusebio Yuson?

A. Yes, sir.

Q. Do you remember the day when Eusebio Yuson died?

A. Yes, sir; March 17th.

Q. The night on which Eusebio Yuson died was or was not the chief of police, Francisco de Guzman, in your house?

A. He was in my house.

Q. How many times was he in your house?

A. Twice.

Q. Do you know how much time elapsed between the first time you saw the chief, Francisco de Guzman, in your house and the second time when he went to your house again?

296 A. About 10 minutes, more or less.

Q. Do you know where in the municipality of Gapán the house of Emilio Valdez is located?

A. Yes, sir.

Q. And do you know where the house of Eusebio Yuson is located?

A. Yes, sir.

Q. Can you inform the court how much time would be consumed in walking between those two houses of Eusebio Yuson and Emilio Valdez?

Mr. Ledesma: I object to the question because it is improper in rebuttal.

The Court: Objection overruled, and the witness may answer.

A. Some 5 minutes.

Mr. Buencamino (continuing):

Q. And to run that distance?

A. Some 3 minutes.

Q. Were you in the municipal building that night after the occurrence?

A. Yes, sir.

Q. Did you see the firearms of the policemen or not?

A. No, sir.

Q. That is all with this witness.

Cross-examination by Mr. Chicote:

Q. How many times was the chief of police, Francisco de Guzman, in your house that night?

A. Twice.

Q. Did you hear the shots?

A. No, sir.

297 Q. What was the object of the sarge-nt or chief in going to your house the first time?

A. To give me an account that the house of Eusebio Yuson was being assaulted.

Q. What were the words that he used when he arrived at your house that first time?

Q. When he arrived he called to me through the window, and told me that he came to inform me that the house of Eusebio Yuson was being assaulted.

Q. Did he tell you that some one had told him that, or did he tell you that he had seen the outlaws in the house of Eusebio Yuson?

A. He said nothing of the kind, only that he had heard the shot and came at once to my house to inform me that the house of Eusebio Yuson was being assaulted, in view of the fact that he heard the shots on that side.

Q. Did he tell you how many shots he had heard?

A. No, sir.

Q. Why did he go to your house the second time?

A. He told me that a man had told him that Eusebio Yuson had died.

Q. You left your house that night did you not?

A. Yes, sir.

Q. You went out with the chief did you not?

A. The chief went first.

Q. Have you at any time ran the distance between the house of Eusebio Yuson and the house of Emilio Valdez?

A. No, sir.

Q. Have you at any time walked that distance?

A. Yes, sir.

Q. How long a time did it take you to cover that distance when you returned?

298 A. Less than 5 minutes, more or less.

Q. From your house you went to the municipal building did you not?

A. Yes, sir.

Q. Did you find the policemen there?

A. Not yet.

Q. Was the *sarge-nt* there when you arrived?

A. Yes, sir.

Q. Is it not true that afterwards you and the *sarge-nt* went to the house of Eusebio Yuson to learn what had occurred?

A. No, sir, I did not go with him.

Q. Did you go alone?

A. I went with the president of the board of health and the Judge.

Q. Then he went out before you did, and you remained there awaiting those men?

A. That is not true; the *sarge-nt* remained in the municipal building.

Cross-examination by Mr. Southworth:

Q. Is not the house of Emilio Valdez situated in a prominent part of the town of Gapán?

A. Yes, sir.

Q. As well as the house of Eusebio Yuson, which is situated in a populous part of the town?

A. Yes, sir.

Q. The street which passes by the house of Eusebio Yuson and which crosses the street going in the direction of the house of Emilio Valdez is a fairly prominent or well peopled street of the town is it not?

A. Yes, sir.

Q. What is the name of that street? Is it Corro St.?

299 A. I do not remember.

Q. What is the name of the street that unites with that street where the house of Emilio Valdez is located?

A. I do not remember the names of those streets.

Q. It is a street fairly well peopled in the town is it not?

A. Yes, sir.

Q. So that a person who might come out of the house of Eusebio Yuson would have to pass by several streets fairly well filled with people to go to the house of Emilio Valdez?

A. At the places where there are many people, yes.

Q. How far is your house from the municipal building?

A. About 100 meters.

Q. How far is it from the house of Eusebio Yuson to that of Emilio Valdez?

A. About 300 meters.

Statement of Paulino Avelino.

This witness, being first duly sworn, stated his name is Paulino Avelino, 26 years of age, married, municipal policeman of the town of Gapán, Nueva Écija, and a resident of the same town. (A. Gempezao, interpreter.)

Direct examination by Mr. Buencamino:

Q. Do you know Emilio Valdez and Eusebio Yuson?

A. Yes, sir.

Q. Do you remember also the day on which Eusebio Yuson died?

A. Yes, sir.

Q. Where were you when you heard shots that night of the death of Eusebio Yuson?

300 A. I was in front of the livery stable of P. Mariano.

Q. At what distance from the house of Emilio Valdez?

A. Not very far; it is near.

Q. How many minutes, if you walk?

A. I believe some 2 minutes.

Q. Upon hearing the shot that night what did you do?

A. I started for the municipal building.

Q. To go — the municipal building from that livery stable did you or did you not pass in front of the house of Emilio Valdez?

A. I passed by there because it is on the road.

Q. In passing by the house of Emilio Valdez did you or did you not notice the windows of the house of Emilio Valdez?

A. Yes, sir.

Q. Did you or did you not then see at the window Emilio Valdez?

A. I did not see him.

Q. When you passed by the house of Emilio Valdez how long or how many minutes had passed since you had heard the shot?

A. According to my calculation it would have been 5 minutes.

Q. And upon arriving at the municipal building did you or did you not hear cries from the house of Emilio Valdez?

A. I heard nothing.

Q. Did you depart from the municipal building that night after arriving there or not?

A. No, sir.

Q. Do you know the chief, Francisco de Guzman?

A. Yes, sir.

Q. Did he arrive at the municipal building after you had arrived there?

301 A. Yes, sir.

Q. Did he give you a firearm?

A. Yes, sir, he gave me a firearm.

Q. Did you then go out or not?

A. I set out for the place from which proceeded the shot to ascertain whether or not there were outlaws there.

Q. How long elapsed from the time you heard the first shot until you departed from the municipal building?

A. A minute.

Q. Do you say you employed 5 minutes, more or less, from the livery stable until you passed in front of the house of Emilio Valdez?

Q. From the livery stable to our municipal building, some 5 minutes.

Q. Then how long did you remain in the municipal building before leaving there?

A. Some 10 minutes.

Q. During all that time did you or did you not hear cries proceeding from the house of Emilio Valdez?

A. No, sir.

Q. Did you hear during all that time the voice of Emilio Valdez saying "What are you doing? the police, why do they not come?"

A. I heard nothing.

Q. Nothing more.

Cross-examination by Mr. Chicote:

Q. When you departed from the municipal building were you ordered by the chief to go to the place of the trouble and see what was occurring?

A. Yes, sir.

Q. You went there and ascertained what had occurred, asking the persons there at that place what had happened?

302 A. Yes, sir.

Q. Then did you return to the municipal building to inform the chief what you had learned?

A. Yes, sir.

Q. Then he wrote down on a paper what you had told him, and after having written on that paper he said he was going to give an account of the affair to the president?

A. When I departed for the house of Eusebio Yuson I left the chief there.

Q. No, I refer to the time when you returned. Did you not return from the house of Eusebio Yuson to the municipal building to inform the chief what you had seen and heard there?

A. Yes, sir, and I told him, the chief, that Eusebio Yuson had been killed.

Q. Then the chief left the municipal building and went to the house of the president did he not?

A. Yes, sir.

Q. And after a little while the chief returned again to the municipal building did he not?

A. Yes, sir.

Q. How long was the chief at the house of the president?

A. I believe one minute.

Q. You have said you were at the livery stable of P. Mariano or in front of the livery stable, no; what is that livery stable? Is it not true that it is in front of the house or the convent?

A. Yes, sir.

Q. Is it not also true that the church and the convent are in front of the house of Emilio Valdez?

A. Yes, sir, this is the convent, and this is the house of Emilio Valdez (giving an example).

303 Q. What is the distance, more or less, from the place where you were in front of the livery stable to the house of Emilio Valdez?

A. Walking, some 5 minutes.

Q. State if from that place to the house would be the same distance that it is from where you are now to that wall (indicating a distance of 30 or 40 meters, by agreement of the parties.)

Q. That distance, yes sir, because this is the house of Emilio Valdez, and the livery stable is there in front, which is on the other side of the street.

Q. Your being at the corner which forms the livery stable of P. Mariano, is it not true that from there you could see the house of Eusebio Yuson?

A. No, sir, because there are large houses in between.

Q. You were in the street which is behind the church, the street, the street called Corro St. were you not?

A. Yes, sir, I was there walking in front of the livery stable.

Q. Corro Street is it not?

A. That street is in the suburb of San Vicente.

Q. Is it not true that in that Corro Street is also situated the house of Eusebio Yuson?

A. The house of Eusebio Yuson is further away there from the house of Adorable.

Q. Is it not true that the house of Adorable, the house of Eusebio Yuson, and the livery stable of P. Mariano are located in the same street, but separated one from the other?

304 A. No, sir; the livery stable is situated in a transversal street.

Q. Is it not true that the stable forms the corner between the street where Adorable is located and that other street that you say the stable itself forms the corner of?

A. That street where the stable is situated is a street that leads to the stable where the street of Emilio Valdez is.

Q. Now, if you follow that street and later, coming from the house of Emilio Valdez, arrive at the stable of P. Mariano and go on doubling to the right and arrive at the house of Adorable, you will afterwards arrive at the house of Eusebio Yuson, will you not?

A. Yes, sir; that street is in the middle because there is another street near the seed-field.

Q. You heard the shot?

A. Yes, sir.

Q. When you were at that corner?

A. Yes, sir.

Q. And you went to the place where you heard the shot?

A. Yes, sir, after my chief had given me arms.

Q. You heard the second shot?

A. Yes, sir.

Q. You afterwards heard various other shots in succession?

A. Yes, sir.

Q. And then is when you went to the municipal building?

A. I was there a little while awaiting our chief.

Q. How many minutes, more or less, were you at that corner of the stable awaiting the arrival of the chief?

A. Some 10 minutes.

Q. Ten minutes after you heard the first shot?

A. Yes, sir, because I was awaiting at the municipal building.

305 Q. No, I wish to know if after you heard the first shot you remained at the corner and there heard the second shot?

A. I was then walking.

Q. So that upon hearing the first shot you started to run toward the municipal building?

A. I started for the municipal building walking rapidly.

Q. Did you do nothing to ascertain from where that shot came nor consider the significance of that shot? You did nothing?

A. Well, I was awaiting the chief to know what that was.

Q. In the municipal building?

A. Yes, sir, I was awaiting there.

Mr. Buencamino: Why did you go to the municipal building upon hearing the shot, and why did you not go in the direction from where the shot came?

A. I did not remember, due to the fact that I was not armed, because after that first shot I heard a second shot; and I had formerly been a member of the Constabulary where, whenever I heard a shot, I had to go first to the barracks to secure my gun, as is thus my custom.

Q. State to the court where you waited for the chief of police: at the municipal building or at the corner where you remained 10 minutes?

A. In the municipal building.

Mr. Chicote: Who was the chief of the guard on that night of the occurrence?

A. Our same chief.

Q. Is it not true that you were then chief of the guard and that on that night your services were utilized as a policeman and chief of the guard?

A. I was not then on guard; but we, although not on duty, remain at the municipal building for anything that may arise.

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Statement of Antonio Abad.

This witness, being first duly sworn, stated his name is Antonio Abad, 49 years old, single, a land owner, and a resident of Gapán, Nueva Écija, P. I. (A. Gempezao, interpreter.)

Direct examination by Mr. Buencamino:

Q. Do you know Gil Abad?

A. Yes, sir.

Q. What relation is he of yours?

A. My brother.

Q. On any occasion during the month of May, especially about the middle of that month, did you or did you not order your tenant, Lucas Figueroa, to go to the house of Gil Abad with the task of getting a cart and some bamboo?

A. I did not order him to get a cart.

Q. Did you send Lucas Figueroa there to get bamboo about the middle of the month of May, last?

A. No, sir.

Q. Did you at any time send Lucas Figueroa during the month of May to perform any task of any nature at the house of your brother?

A. No, sir.

Cross-examination by Mr. Chicote:

Q. What relationship have you with the family of Eusebio Yuson?

A. I am not related in any way with the family of Eusebio Yuson.

Q. Has Lucas Figueroa been at any time in your house?

A. No, sir.

Q. Never?

A. One day only when I was not at home.

307 Q. What relation, if any, do you bear to Lucas Figueroa?

A. He is my tenant.

Q. Is it not true that you and your brother are on bad terms?

Mr. Buencamino: I object to the question, because it has nothing to do with the case.

The Court: Objection sustained.

Mr. Chicote (continuing):

Q. Are you related to the wife of Eusebio Yuson?

A. No, sir, I am not.

Q. Which one of your family is related to the family of Eusebio Yuson?

A. None.

Q. You were not godfather to Eusebio Yuson?

A. No, sir.

Q. Nor of the wife of Eusebio Yuson?

A. No, sir.

Q. When was the last time you talked with your brother, Gil Abad?

Mr. Buencamino: I object to the question as incompetent.

The Court: Objection sustained.

Mr. Chicote: Exception.

Mr. Chicote (addressing the witness):

Q. Have you talked at any time with Lucas Figueroa regarding the conversation that said Lucas Figueroa had with your brother, Gil Abad?

Mr. Buencamino: I object equally because it is not a matter of evidence.

308 The Court: The objection is also sustained.

Mr. Chicote: Exception.

Mr. Chicote (continuing):

Q. Are you owner of any cart?

A. Yes, sir.

Q. Where did you have that cart about the middle of the month of May?

A. Due to the fact that the warehouse in question is my property all the carts are kept there.

Q. Where is that warehouse?

A. It is toward the east.

Q. Is it not true that the warehouse is in front of the house of your brother, Gil Abad?

A. No, sir.

Q. Where is it?

A. My warehouse is in front of the protestant church.

Q. And where is the house of Gil Abad with regard to that warehouse?

A. It is east of the protestant church.

Q. At what distance from the warehouse?

A. From the warehouse to his house would surely be 40 meters.

Q. Departing from your house one would first arrive at the warehouse or would one first arrive at the house of Gil Abad?

A. One arrives before the warehouse.

Q. How long has Figueroa been your tenant?

A. It is now 4 years.

Q. And during those 4 years Lucas Figueroa has been in your house only once?

309 A. In the past he used to go there frequently, but during those last days, no, in view of which I have not been there because he was absent.

Q. Have you been outside the town of Gapán?

A. I went to Cabanatuan to order a cockpit to be erected.

Q. From what time and until what time have you been in Cabanatuan?

A. From the month of November to the 5th of April.

Q. But from the 5th of April you have been in Gapán?

A. Yes, sir.

Q. Who is in charge of the warehouse where those carts are kept?

Mr. Buencamino: I object to the question because the testimony of Gil Abad says who went to his house and not to the warehouse.
The Court: Objection sustained.

Mr. Chicote:

Q. State whether or not Gil Abad has any employment in the warehouse to which you have previously referred.

Mr. Buencamino: I object to the question as immaterial.

The Court: And it is improper on cross-examination.

Mr. Chicote: Exception.

Q. Do you or do you not know if Lucas Figueroa has had any conversation with your brother in the month of May, with your brother, Gil Abad?

310 Mr. Buencamino: The question is improper on cross-examination; therefore, I object to it.

The Court: Objection sustained.

Mr. Chicote: Exception.

Mr. Chicote (continuing):

Q. Are you sure that you did not send Lucas Figueroa or is it merely that you do not remember sending him to look for a cart?

A. I have not ordered him, but I have ordered the warehouse to be constructed.

Q. Whom did you order to construct it?

A. My laborers, and this Lucas Figueroa and some of my tenants were working there.

Q. State if you know or if you do not know if any person of your house or any other person in your house ordered or sent Lucas Figueroa to take a cart to be repaired?

Mr. Buencamino: I object to the question?

The Court: That question is ordered stricken from the record.

Mr. Chicote: Exception.

Mr. Chicote (continuing):

Q. You have said that you sent Lucas Figueroa and other laborers to erect the warehouse. Now state if it was or was not necessary to use in the construction of that warehouse the carts or the bamboo of which you could dispose?

A. I was indeed needing bamboo, but how could I order that when I was there present during those days and all the materials were prepared?

311 Q. And is it not true that Lucas Figueroa was also there all the time working?

A. He was working more or less 4 days only.

Q. And you saw him there, and he saw you there, is it not true?

A. I think so, and we saw each other, because he was a very good workman.

Q. In what month were you constructing that warehouse?

Mr. Buencamino: I object to the question as immaterial.

The Court: As the witness stated during the month of May he may answer.

A. Inasmuch as we wished to utilize it during the holiday it was finished then.

Mr. Chicote (continuing):

Q. In what month?

A. In the month of April, before the first of May.

Q. Was the warehouse finished before the first of May?

A. On the eve of the holiday it was finished.

Q. What date was that?

A. On March 1st it was already finished.

Statement of Cándido García.

This witness, being first duly sworn, stated his name is Cándido García, 23 years old, married, an employee, and a resident of the town of Gapán, Nueva Écija, P. I. (A. Gempezao, interpreter.)

Direct examination by Mr. Buencamino:

Q. Do you remember the night of the death of your uncle, Eusebio Yuson?

312 A. Yes, sir.

Q. Where were you that night?

A. I was in our house.

Q. Is your house the same as the house of Eusebio Yuson, or is it another house, and, if so, how far distant is it?

Q. I live in my father's house, the house of Florentino García which is contiguous to the house of Eusebio Yuson.

Q. On what side is your house which is contiguous to the house of Eusebio Yuson? Is it on the same side as the house of Eusebio Yuson or is it on the other side?

Q. Our house is west of the house of my uncle Eusebio Yuson.

Q. But is it on the other side or is it on the east side?

A. On the other side.

Q. Did you or did you not fire shots that night?

A. I did.

Q. Before you fired the shots that night did you or did you not hear any shot?

A. I heard shots.

Q. Before you fired the shots did you or did you not hear the voice of your aunt, Perfecta de Guzman?

A. I heard her saying, "Candíng, Fernando, help, because a misfortune has occurred to your uncle."

Q. At what place did you fire shots, and from where did you hear the shots that were fired?

A. I fired three shots through the window in the air toward the east, and at intervals I cried "help."

Q. And what motive did you have in firing those three shots?

Mr. Southworth: I object to the question as it is not competent evidence in rebuttal.

313 Mr. Buencamino: I withdraw the question.

Mr. Buencamino (addressing the witness):

Q. Did you hear any other shot after you had fired?

A. Yes, sir.

Q. Nothing more.

Cross-examination by Mr. Chicote:

Q. How many shots had you heard when you fired the three shots?

A. One.

Q. And you afterwards fired 3 shots in succession?

A. I have stated that I fired three shots after hearing my aunt Perfecta calling for help, and those 3 shots I fired at intervals while calling for help.

Q. And before hearing your aunt's voice how many shots had you fired?

A. I had not fired any shot.

Q. What interest, if any, have you in the result of this suit?

A. My interest in this affair is that if they are truly guilty that they should suffer, but if they are innocent that they be acquitted.

Q. Where did you have the firearm with which you fired the shots?

A. The shotgun was not mine: it belongs to my father.

Q. Where was your father at that moment?

A. He was in Cabanatuan.

Q. Where was your brother Fernando?

A. He was in the house with me.

314 Q. Where was the firearm?

A. Hanging on a post.

Q. Where were the munitions for that firearm?

A. Hanging in a wardrobe.

Q. So that you, upon hearing the voice of your aunt, ran to the wardrobe, first took out the munitions, and afterwards picked up the firearm, loaded it, and fired?

A. No, sir.

Q. Then how was it?

Q. The shotgun already had 4 cartridges in it, because my father's shotgun has 5 shots.

Q. It is an automatic loading shotgun is it not?

A. Yes, sir.

Q. And why did you not discharge the four shots?

A. Because I believed the 3 shots were sufficient to cause an alarm, and that the police would come to our aid.

Q. So that at the same time that you were firing you had in mind that you were discharging two shots, and when you were firing the third one you believed that it would be sufficient?

A. I have already said that on firing I was calling for help, and that after firing those three shots I considered that they were enough to cause an alarm.

Q. The cartridges of that firearm are of metal or of paper?

A. The exterior part is of paper, and the end of the cartridge is of metal.

Q. Do you know where those cartridges and the shotgun were purchased?

Mr. Buencamino: I object to the question.

The Court: Objection sustained.

Mr. Chicote: Exception. Nothing more.

315 LUCAS FIGUEROA was recalled to testify as a witness under his former oath, the personal circumstances of which appear in the record. (A. Gempezo, interpreter.)

Redirect examination by Mr. Buencamino:

Q. I show you Exhibit 4 of the defense, which purports to be the information contained in the complaint in this case, presented in the justice of the peace court against you and in which it is alleged that you, in answer to the question of the judge as to whether or not you were guilty, stated you were guilty. I now ask you why you pleaded guilty and under what circumstances you gave that answer.

Mr. Chicote: I object because it is in rebuttal; cross-questioning your own witness.

The Court: The witness may answer.

Mr. Chicote: Exception.

A. In view of my limited knowledge, I believed that that statement which I signed was my declaration before the captain and the lieutenant who was questioning me.

Mr. Buencamino:

Q. So that in signing this information or statement you believed *you believed* that what the judge was asking you was a deduction of the capitan or of the teniente?

Mr. Southworth: I object to the question as suggestive.

The Court: I sustain the objection.

Mr. Buencamino:

316 Q. I show you Exhibit 5 of the defense which purports to be your affidavits before the justice of the peace of Gapán, and I ask you why in that affidavit Exhibit 5 you did not mention the name of Emilio Valdez?

Mr. Chicote: I object to the question because the witness has already testified regarding that declaration, having before him his statement which was translated to him.

The Court: Objection sustained inasmuch as it is a question he has answered the first time he testified here as a witness.

Mr. Buencamino (continuing):

Q. What was your state of mind, and what were the circumstances in connection with the execution by you of Exhibit 5?

A. My state of mind was then disturbed by fear due to the fact he had told me if he were imprisoned or caught he would kill me, in view of the great influence he had in Gapán, but now that I have come to the court I have told the truth.

Q. And who is it of whom you had fear?

A. Emilio Valdez.

Q. I now ask you whether or not you know Gil Abad?

A. I know him.

Q. During the month of last May, and especially after the holiday of that town about the middle of said month, were you or were you not at any time in the house of Gil Abad for any reason?

A. In the month of May I was not in his house.

Q. You never went to his house in the month of May?

A. No, sir.

Q. Is it true or not that you went to his house in the middle of May and had a conversation with him?

Mr. Ledesma: I object to the question because the witness has not said that; but we will withdraw the objection.

317 A. No, sir.

Mr. Buencamino (continuing):

Q. Is it or is it not true that you stated to Gil Abad at any place during the month of May that you had seen a man at the corner near the house of Dr. Adorable, but that you did not know that man, and that neither could you distinguish what the said man had in his hand?

A. It is not true, because I was at the barracks of the Constabulary in Cabanatuan.

Q. Did at any time your principal, Antonio Abad, or any member of the family of Antonio Abad send you to the house of Gil Abad or to any other place to ask from him a cart or certain bamboo?

A. No, sir.

Q. That is all.

Recross-examination by Mr. Southworth:

Q. Is it not true that you have sworn to two statements, one on the 25th of May and the other on the 28th?

A. That which I have made is the one made before the captain.

Q. That was made before the one you made before the justice of the peace?

A. I do not remember; all that I know is the statement made before the captain or the lieutenant.

Q. Is it not true that in the first statement that you made you did not mention the name of Emilio Valdez?

A. I did not mention him because I was afraid.

Q. It is true that the reason you did not mention his name is because you were afraid of Emilio Valdez?

A. Yes, sir, I was afraid on account of his threat.

318 Q. When did you see Emilio Valdez for the first time after you had signed the sworn statement?

A. I saw him when we were being questioned in Gapán on the occasion when Emilio Valdez was made a prisoner, and afterwards here at the hearing which is going on.

Q. That was the first time you saw Emilio Valdez after you had signed that sworn statement?

A. In Gapán and here.

Q. When was Mr. Emilio Valdez arrested?

A. When I mentioned him.

Mr. Southworth: I ask you to reply to the question.

Q. That was the first time you mentioned the name of Emilio Valdez after he was arrested was it not?

A. Yes, sir, since that time I mentioned him.

Q. Is it not true that you made another sworn statement on the 28th, 3 days after you made the first one, in which you mentioned the name of Emilio Valdez?

Mr. Buencamino: I am going to admit that the witness has made such statement, but I am going to call the attention of the court to the fact that the day of the arrest of Emilio Valdez was the 28th.

The Court: Good, the witness may answer.

A. I do not remember because my mind was disturbed; and besides on account of the fear that I have due to his great influence; but now that I have come here I am telling all the truth.

Mr. Southworth (continuing):

Q. Were you not afraid of him on the 28th when you made that sworn statement?

319 A. I was not then afraid because I was at that time under the protection of the Constabulary.

Q. But were you not with the Constabulary guards on the 21st before making the first sworn statement?

A. I do not now remember in view of the fact I have little knowledge regarding dates, so much so that if they were to recall it to me I could not state positively.

Q. But do you not remember that you were under the protection of the Constabulary on the 25th when you made this first sworn statement?

A. I do not remember all of that, but now I am telling the truth.

Q. On the 25th you did not have sufficient confidence in the Constabulary to testify to that?

A. I had confidence in them, but due to the fact that I had much about which to think I could not tell everything.

Q. But on the 28th they had assured you that you would be safe in testifying against Mr. Emilio Valdez had they not?

A. Well, I have mentioned in my statements about Emilio Valdez.

Q. On the 28th the Constabulary made you believe that you were safe in testifying against Mr. Emilio Valdez?

A. Yes, sir.

Q. What did they say to you to make you believe that you were safe in testifying against Emilio Valdez?

A. He told me that if anything unfortunate happened they would pardon me and look out for me, but I was not placing so much confidence in that, because my thoughts were disturbed.

Q. When did you have sufficient confidence?

A. Since they took me to San Ysidro.

320 Q. There the Constabulary stated to you that if you would testify against Emilio Valdez you would not be molested in this case?

A. Yes, sir.

Q. And is it not true that that was the motive that induced you to testify against Emilio Valdez?

A. I was not induced, but due to my own judgment I decided to testify to all the truth.

Q. But is it not true that you did not testify against Emilio Valdez until they told you, the Constabulary, that if you would testify against Emilio Valdez that you would be safe?

A. The constabulary soldiers told me nothing.

Q. Is it not true that if the Constabulary had not told you you would not be molested in this case you would not have testified against Emilio Valdez if it were not for that?

A. I do not understand the question.

Q. State if it is true or not that the Constabulary told you that if you would testify against Emilio Valdez that you would not be molested.

A. The Constabulary told me that I must tell all that I knew, but I do not know if in all of my testimony I had mentioned him; on that account I have now mentioned him.

Q. To whom do you refer when you say "him"?

A. Emilio Valdez.

Q. Are you not sure that you have mentioned to the Constabulary that Emilio Valdez was connected with this assassination?

A. I do not remember whether or not I said that, because I have understood that Emilio Valdez knows that.

321 Q. Have you stated on any occasion to the Constabulary that Emilio Valdez had any participation with this assassination?

A. I know that I have said that Emilio Valdez did participate in the assassination of Eusebio Yuson.

Q. When was the first time that you made that statement to the Constabulary

A. I do not know when it was that I so informed them; I do not remember.

Q. Did you say that to the Constabulary before you made the sworn statement of May 25th?

A. I do not know about that statement of the 25th.

Q. The first sworn statement

A. I did not mention him in the first declaration, because I was then afraid; but now that we are here after having been arrested I state the truth that he has killed (him).

Mr. Southworth: I ask that the witness answer the question.

A. In the first sworn declaration I did not mention him because I was then disturbed; but I now state that it was Emilio Valdez because I saw him.

Mr. Southworth: Nothing more.

The Court: The session of the court is now closed until this afternoon.

Afternoon Session of Court.

Having called again the hearing of this case on the afternoon of the 12th of July, 1912, for a continuation, before the Hon. Ysidro Paredes, Judge, the same parties were present.

322 Continuation of Rebuttal Evidence of the Prosecution.

Statement of Remigio Reyes.

This witness, being first duly sworn, stated his name is REMIGIO REYES, 25 years of age, married, a municipal policeman of Gapán by profession, and a resident of the same town of Gapán, Nueva Ecija Province, P. I. (A. Gempezao, interpreter.)

Direct examination by Mr. Buencamino:

Q. Are you now a municipal policeman of Gapán?

A. Yes, sir.

Q. Were you a municipal policeman on the day Eusebio Yuson died?

A. Yes, sir.

Q. State if on the night of the death of Eusebio Yuson you left the barracks armed.

A. With arms.

Q. State if on that night you discharged your firearm.

A. When I arrived on front of his house there I fired because I heard a shot fired.

Q. In front of whose house were you when you fired?

A. Eusebio Yuson's house.

Q. And before you fired the shot did you hear another shot?

A. Yes, sir.

Q. Do you remember how many shots you heard fired?

A. First one shot when I was at the municipal building.

Q. And how many other shots did you hear fired before you discharged your firearm?

A. Four.

Q. Four in all from the first shot, or four more after the second?
323 Mr. Miranda: I object to the question because it is rather cross-examination.

The Court: The witness may answer.

A. Only four shots.

Mr. Buencamino: I have no further questions to ask this witness.

Testimony of Gervasio Estrella.

This witness, being first duly sworn, stated his name is GERVASIO ESTRELLA, 21 years old, married, is a municipal policeman of Gapán, Nueva Ecija Province, and a resident of the same town. (A. Gempezao, interpreter.)

Direct examination by Mr. Buencamino:

Q. Were you a municipal policeman of Gapán on the day that Eusebio Yuson died?

A. Yes, sir.

Q. Did you leave the barracks that night armed or without arms?

A. Armed.

Q. Did you discharge that firearm that night or not?

A. I did.

Q. How many shots did you fire with that arm that night?

A. Three.

Q. Where did you fire those shots.

A. At the side of the house of Eusebio Yuson.

Q. Did you hear any other shot that night before you fired your gun or not?

A. Yes, sir.

324 Q. How many shots did you hear fired before you fired?

A. First one shot, then three followed, and one shot by my companion, a policeman.

Q. And afterwards the three shots that you fired?

A. Yes, sir.

Q. Nothing more.

Cross-examination by Mr. Miranda:

Q. Did you have the firearm with you when you left the municipal building?

A. Yes, sir.

Q. Who delivered the arm to you?

A. Our chief.

Q. Who accompanied you when you started for that place, from the municipal building?

A. Two of us.

Q. Only two of you left the municipal building?

A. What I know is there were two of us.

Q. Do you know if the other policemen fired also?

A. I cannot say.

The Court:

Q. What kind of a firearm did you have?

A. A revolver.

Q. A revolver is the regular arm used by the police of Gapán at that time?

A. Yes, sir.

MATEO ARCILLA was recalled to testify as a witness in rebuttal under his former oath when he testified, the personal circumstances of which appear in the record. (A. Gempezao, interpreter.)

325 Redirect examination by Mr. Buencamino:

Q. I show you the document marked Exhibit 4 of the defense which purports to be a notice before the justice of the peace of Gapán of an information presented in that court against you, in which exhibit it is alleged that you, in answer to the question of the justice of the peace as to whether or not you were guilty, had replied that you were guilty. Tell us the circumstances under which you pleaded guilty, if you did plead guilty.

Mr. Chicote: I object to the question because it is not in rebuttal and on account of this same kind of a question being included in the direct examination of the prosecuting attorney.

The Court: The witness may answer, because as yet that has not been ans-ed.

A. I was seated on a bench in the office of the justice of the peace of Gapán, and as there were there many people on that occasion the justice was reading in a loud tone a document; and finally he asked me if I was guilty of the charge in that document with Emilio Valdez, and I said yes.

Mr. Buencamino: When you replied "yes" to the justice, did you know that you were answering a question as to whether or not you were guilty as charged in the information?

Mr. Chicote: I object because the information itself is the best evidence.

Mr. Buencamino: I withdraw the question.

326 Q. What is it that you understood by that act regarding that to which the justice of the peace referred?

A. I understood, due to the noise made by the people, that he was asking if they had done it, and I replied "yes."

Q. That is all.

Recross-examination by Mr. Chicote:

Q. Is it not true that before that act the hearing had been conducted in idiomatic Tagalog?

A. I do not know if it had been conducted in idiomatic Tagalog?

Q. You did not hear anything read?

A. That very same — when he was asking me on the occasion when there was much noise if it is true that they had committed that act, and I said “yes.”

Q. But you heard that in idiomatic Tagalog or in Spanish?

A. I cannot say if it was in Spanish or in Tagalog, because many people were entering.

Q. At what distance were you from the place where the justice was?

A. I think about 3 yards.

Q. And were there many people between you and the justice of the peace?

A. There were not so many people, but there were many people present who were talking.

Q. Between you and the justice?

A. Between us, no; but on the left side.

Q. That is all.

327 JUAN GATMAITAN was recalled to testify as a witness in rebuttal under the same oath as when he had previously testified, the personal circumstances of which appear in the record. (A. Gempezao, interpreter.)

Redirect examination by Mr. Buencamino:

Q. I show you exhibit 7 of the defense which is a sworn statement that appears to have been signed by you. State to the court the circumstances under which this document was executed by you.

Mr. Chicote: I object because it is not a proper question in rebuttal, and for the further reason that this witness was questioned and examined as a witness of the prosecution regarding this same subject-matter, regarding the circumstances which moved him to sign this document, and then the prosecuting attorney could have ascertained any other circumstances which he now wishes to know.

The Court: The witness may answer.

A. The first statement?

Mr. Buencamino (continuing):

Q. Yes, that is your first statement.

A. The first time because of his invitation that we be friends.

Q. In this document you say that on the morning that they killed Eusebio Yuson, Emilio Valdez and Francisco Amante were together in the house of the said Emilio Valdez in Gapán; and why in your declaration in the court did you not mention that Francisco Amante was also present on that day, Sunday?

328 A. Because when I made that statement on the first occasion my thoughts were disturbed, and on account of that I was not able to tell everything.

Q. Why were your thoughts then disturbed?

A. Because I was thinking of the acts we had done.

Q. In what form did you make that, your first declaration?

A. In the first declaration they were questioning me, and I responded with the word "yes," because they were asking me questions after questions, and I was replying "yes."

Q. That is all.

Recross-examination by Mr. Chicote:

—. All that to which you refer, the manner of testifying, was it when you were testifying before the captain and the lieutenant of Constabulary?

A. Yes, sir.

Q. Is it not true that afterwards you were taken to Gapán?

A. Yes, sir.

Q. Before the justice of the peace?

A. Yes, sir.

Q. And is it not true that once there the justice of the peace read to you that document in Tagalog, and you then raised your hand before said justice of the peace, and afterwards you were asked if you would swear to it?

A. Yes, sir.

Q. Nothing more.

329 TOMÁS DIEGO was recalled to testify as a witness in rebuttal under the same oath as when he had previously testified, the personal circumstances of which appear in the record. (A. Gempezao, interpreter.)

Redirect examination by Mr. Buencamino:

Q. Do you know Miguel Liuag?

A. If I should see him I would know him.

Q. Do you know that man over there (indicating Miguel Liuag)?

A. Yes, sir, it is he himself.

Q. Do you remember the Monday following the death or the day of the death of Eusebio Yuson?

A. I know that it was Monday.

Q. State to the court if on that day, Monday, at any hour of the same day, you had or did not have any conversation with this Miguel Liuag?

A. I had a conversation with him.

Q. Were you on that day, Monday, at any hour of that day, in the house of the deceased, Eusebio Yuson?

A. Due to the fact that on that day Monday they hired my carromata when the servant had to return, I was invited to enter the house to dine.

Q. Did you have any conversation with Miguel Liuag in that house?

A. No, sir.

Q. And in the lot of that house did you have any conversation with Miguel Liuag during that day?

A. No, sir.

Q. That is all.

Recross-examination by Mr. Southworth:

Q. In whose house were you invited by the servant to dine?

A. Those to whom they had sent me invited me to dine when we arrived there.

330 Q. The people of what house?

A. The house of Eusebio Yuson.

Mr. Chicote:

Q. At what hour did you leave with that person or persons that invited you to dine?

A. At the noon hour, the hour to eat.

Q. And only at that hour after lunch is when that which you have related occurred?

A. It occurred about the noon hour.

Q. You have stated that you would not know Miguel Liuag unless you saw him; how can you be sure that you did not have any conversation with that man on Monday to which the prosecuting attorney has referred?

A. If I have not talked with him.

Q. But is it not true that he was there?

A. I did not see him.

Q. Did you see the captain of Constabulary, Mr. Crockett?

A. I saw him.

Q. What persons were accompanying Captain Crockett when you saw him at that place?

A. I cannot say because I only entered at the same time that they did in the doorway.

Q. At what time did you see the captain?

A. The sun was so high (indicating a certain height of the sun).

Q. Before or after noon?

A. That I cannot state.

Mr. Buencamino:

Q. Was it in the morning or in the afternoon you saw the captain?

A. Well, I do not remember if it was in the morning or after the noon hour.

331 Q. Did you say to Miguel Liuag that morning in the lot of Eusebio Yuson that you did not see any person leave the lot of the said Eusebio Yuson on the night of the occurrence?

A. I said nothing to him.

Mr. Buencamino: That is all. We will close our evidence, asking the court that it visit the place of the occurrence in order to make there an inspection so that the court may judge the distances.

Mr. Chicote: Yes; we do not object, so that the court may see.

The Court: The result of that inspection will be evidence for both parties; therefore, we will leave it until you have presented your rebuttal evidence.

Mr. Southworth: Well, we wish that if the ocular inspection is to

be made that the prosecuting attorney state what is the motive in making it.

Prosecuting Attorney: The object of this ocular inspection is that his honor may obtain an accurate idea of all the distance in connection with the assassination of the deceased, as well also of the places where the witnesses for the prosecution found themselves and where they talked together. We want that done in order that everything may be clear.

Mr. Southworth: I have on two or three occasions been present at these ocular inspections held by the court and where they have there taken testimony that produced much confusion. What I wish, with the consent of the prosecuting attorney, is that an inspection be made there, but that no testimony be taken because it produces great confusion when one tries to examine witnesses at the place of the occurrence.

332 Mr. Buencamino: What Mr. Southworth says would be very advisable, but I believe it would be very advisable also not to dispense with a task in which the court may exercise its discretion, so that when said court arrives there it may ask of unknown persons where the deceased fell, where the wad was found, where Gatmaitan was, and where Mateo Arcilla was.

Mr. Southworth: The prosecuting attorney has already proven that here, and there would be many questions and much cross-examination.

The Court: The court has no objection to making that inspection after the defense has produced its rebuttal evidence, not showing in the record the result of said inspection

Mr. Southworth: We have no rebuttal evidence.

The Court: So that we may close the case?

Mr. Chicote: Yes, sir.

The Court: Good, to-morrow you may present your arguments. The session of the court is closed.

SAN YSIDRO, NUEVA ÉCIJA, July 13, 1912.

Before the Hon. Ysidro Paredes, Judge, appeared the same parties in this cause, and oral argument by Messrs. Felipe Buencamino Jr., L. M. Southworth, and Alfredo Chicote was heard. The court, after hearing the arguments of both the prosecution and the de-
333 fense, ordered that the accused Francisco Amante be immediately granted his liberty reserving its decision in regard to the accused Emilio Valdez.

I hereby certify that the preceding is a true transcription of the stenographic notes taken by me in the trial of this case.

(Sgd.)

SANTIAGO GUISANDE,
Official Stenographer.

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EXHIBITS OF PROSECUTION.

Exhibit "A" of prosecution is an affidavit of one José de los Santos not admitted by the court.

Exhibit "B" is a torn and bloody hemp shirt worn by the deceased when shot.

Exhibit "C" is a torn and bloody undershirt worn by the deceased when shot.

Exhibit "D" is a small shot.

Exhibit "E" is a gun wad.

Exhibit "F" translated and follows hereafter.

Exhibit "G" is shotgun, with two barrels, in the possession of the Constabulary, with which the deceased was shot.

335

PROSECUTION'S EXH. "F."

License No. 9297.

File No. 12757/2.

License to Possess Firearms.

(Under Section 11, Act No. 1780, Philippine Commission.)

Headquarters Philippines Constabulary.

MANILA, November 23, 1911.

Mr. Francisco Amante, a resident of Nueva Ecija, born in Bulacan, aged 48 years, by occupation a Proprietor and whose mail address is Gapan, Nueva Ecija, is authorized to purchase and keep the following firearms and ammunition:

Kind.	Arms.			Ammunition.	
	Make.	Caliber.	Serial No.	Caliber.	Quantity.
Shotgun	D. C. Smith	12	325808	12	200
X	X		X		

Subject to the conditions that he will safely keep the said firearms and each of them and will deliver the same to the Government of the Philippine Islands on demand, and that he will not sell, loan or dispose of said firearms and each of them without permission from the Director of Constabulary; as set forth and agreed to in his application and bond on which this License is issued. Neither these firearms nor this License are transferable.

(Signed)

R. W. JONES,

For Director of Constabulary.

Bond No. 7993.

Bondsmen are Deposit, Postal Savings Bank, and
(See G. F. No. 2373.)

336

DEFENDANT'S EXHIBIT X.

MY DEAR SIR: I am now in possession of the whole truth and I hope you will receive

337

DEFENDANT'S EXH. "1."

Received from Francisco Amante this afternoon one tampipe (hamper) of clothes of Miss Maria Valdes.

Manila, Beaterio de la Compañia, March 17, 1912.

(Signed) The Superior, EPIGENIA ALVARES.
(SEAL.)

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DEFENDANT'S EXH. "2."

MANILA, March 17, 1912.

Mr. Francisco Amante, Gapan.

Go Bum Pin.

Flour and other Foreign and Home Articles Sold.
106 Calle Sto. Cristo 106,
Binondo.

To the undersigned,

Dr.

To 4 cans of Hongkong Butter at 8.30.....	\$ 33.20
40 sacks of Flour, Globe brand, at 11.00.....	110.00
20 sacks of Flour, Choice brand, at 9.30.....	46.50
40 sacks of Flour, Hand brand, at 11.40.....	114.00
Transportation	6.00
Total	<u>\$309.07</u>

Stamp.

Go Bum Pin Sto. Cristo 106, Manila.

Received:

GO BUM PIN
By MANUEL.

E. & O. E.

339

DEFENDANT'S EXH. "3."

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of the Justice of the Peace of Gapan, Province of
 Neuva Ecija, March 28, 1912.

Criminal Case No. 744.

THE UNITED STATES
 versus
 JOHN DOE and OTHERS.

For Murder.

Before Ludovico J. Morales, Justice of the Peace.

The undersigned, having duly taken oath as prescribed by law, states: That he accuses Juan Gatnaitan, Mateo Arcilla, Lucas Figueroa, Emilio Valdez and Francisco Amante, and other unknown persons, of the crime of murder committed as follows:

That the aforesaid and aforementioned accused, together with other unknown persons, on the 17th day of March, 1912, in the municipality of Gapan, of the Province of Nueva Ecija, with treachery, hope of gain malice aforethought, between 7 and 8 o'clock at night, assisted by darkness, stationed themselves on the lot of Eusebio Yuzon and there laid in ambush for said Eusebio Yuzon to pass, and, at the moment that he was ascending the stone steps that lead to the open veranda of his house, discharged a shotgun at him, the projectile or small shot of which entered in nine places on the right-hand side of the posterior part of the thoracic cavity (back) and passed out in five places on the said right side of the anterior part of said thoracic cavity in the body of the said Eusebio Yuzon, causing his instant death; and act committed voluntarily, illegally and criminally within the limits of the municipality of Gapan, of the Province of Nueva Ecija, in violation of the law.

Respectfully,
 (Sgd.)

E. W. CROCKETT.

Cedula 1106885, Cuyapo, Jan. 9, 1912.

Subscribed and sworn to before me this 28th of May, 1912.

(Sgd.)

LUDOVICO J. MORALES,
Justice of the Peace.

Received and entered this 28th of May, 1912.

(Sgd.)

LUDOVICO J. MORALES,
Justice of the Peace.

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DEFENDANT'S EXH. "4."

Arraignment: In Gapan on May 28, 1912, there being present the accused, Juan Gatmaitan, Mateo Arcilla, Lucas Figueroa, Emilio Valdez and Francisco Amante, they were advised of their right to appoint an attorney before being informed of the accusation against them, and thereafter Juan Gatmaitan, Mateo Arcilla and Lucas Figueroa stated that they had no funds with which to pay a lawyer and that they left the appointment of an attorney to the court, and thereupon Mr. Joaquin Celis, who was present, was appointed to defend them; Emilio Valdez and Francisco Amante asked the court for a period of two hours before answering for the purpose of enabling them to appoint a lawyer.

The foregoing information was read in full to the accused Juan Gatmaitan, Mateo Arcilla, and Lucas Figueroa, being translated to them, and being fully informed of the contents of the same they pleaded guilty.

Whereupon the present proceeding was terminated.

(Sgd.)

LUDOVICO J. MORALES.

Lucas Figueroa. Juan Gatmaitan. Emilio Valdez. Mateo Arcilla. Francisco Amante. Joaquin Celis.

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DEFENDANTS' EXH. "5."

Affidavit.

THE UNITED STATES OF AMERICA,
Philippine Islands:

I, Lucas Figueroa, 26 years of age, married, a native and a resident of Gapan, of the Province of Nueva Ecija, under oath, spontaneously and without compulsion, state as follows:

That I know Juan Gatmaitan and Mateo Arcilla, residents of said municipality of Gapan, Province of Nueva Ecija; that one night, after the passage of the train, about a month before the murder of Eusebio Yuzon, a resident of said municipality of Gapan, I and Juan Gatmaitan were coming from the house of Antonio Abad and being in the street the aforesaid Juan Gatmaitan said to me "there is some good business;" and I asked him "what is it," and he said: "Francisco Amante will pay one thousand pesos to the one who murders Eusebio Yuzon." I replied "I do not care to do such a thing." On Sunday night and some moments before the murder of Eusebio Yuzon, who was coming from the house of the aforesaid Antonio Abad, whose tenant I am, I, in front of a small acasia tree close to the house of Eusebio Yuzon, met Juan Gatmaitan accompanied by Mateo Arcilla, and I said to him "friend" and he answered me immediately, saying "now is the time" and I then said "I do not want to, because I am afraid" and continued my walk towards the eastern part of the street and Juan, who carried

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a shotgun, went with Mateo Arcilla to the end of the lot of Eusebio Yuzon; that when I was in front of the protestant chapel in the barrio of San Lorenzo I heard a shot followed by several others; that Juan Gatmaitan — a pale red shirt and black pants and a black hat and Mateo Arcilla wore a white hat, a white shirt and red stripes not having noticed what pants he wore.

In witness whereof, and being unable to write or sign my name I affix my thumb print between my name and surname.

(Sgd.)

LUCAS FIGUEROA. (Thumb Print)

Subscribed and sworn to before me this 25th of May, 1912.

(Sgd.)

LUDOVICO J. MORALES,

[SEAL.]

Justice of the Peace.

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DEFENDANTS' EXH. "6."

Affidavit.

THE UNITED STATES OF AMERICA,

Philippine Islands, Municipality of

Gapan (San Isidro), Nueva Ecija:

I, Lucas Figueroa, of age, married, and a resident of Gapan, Nueva Ecija, having been duly sworn, freely and spontaneously state:

That in addition to what I stated in evidence on the trial of the case for the murder of Eusebio Yuzon, I also state that Juan Gatmaitan said to me on the night in question that Francisco Amante and Emilio Valdez were the ones who were to pay him for the murder. He said that the price was one thousand pesos.

In witness whereof I sign the present in Gapan (San Isidro) Nueva Ecija, P. I., this 28th of May, 1912.

(Sgd.)

LUCAS FIGUEROA. (Thumb Print)

Subscribed and sworn to before me this 28th of May, 1912.

(Sgd.)

LUDOVICO J. MORALES,

[SEAL.]

Justice of the Peace.

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DEFENDANTS' EXH. "7."

Affidavit.

THE UNITED STATES OF AMERICA,

Philippine Islands:

I, Juan Gatmaitan, of age, a widower, a resident of the barrio of Mañginoó, municipality of Gapan, Philippine Islands, after having taken oath as required by law, freely, voluntarily and spontaneously state:

That I know Emilio Valdez, a resident of Gapan, N. E.

That I know Eusebio Yuson, also a resident of Gapan, N. E.

That I know Mateo Arcilla, also of Gapan, N. E., barrio of Santo

Cristo.

That I know Lucas Figueroa, of the barrio of Pambuan, Gapan, Nueva Ecija.

That I know Francisco Almonte, an employee of Emilio Valdez. Said Francisco is called "Quico" and is very awarthy and big-bellied.

That Emilio Valdez after harvest time requested me to kill Eusebio Yuson, promising me a reward of nine hundred pesos as soon as I had committed the act. After many such requests on his part I consented thereto.

That on the morning of the Sunday on which we killed Eusebio Yuson, we, Emilio, Quico, Mateo, and I, were in the house of Emilio in Gapan. Emilio then said to us "Eusebio comes from a

346 great distance this day, we will commit the act." We answered that if he were going to arrive this day, and if he was

prepared, we would kill him. Emilio said "at whatever hour this act is finished I will fulfill my promise to pay." He then told us to

retire and that we should return in the afternoon to get his shotgun.

The shotgun belongs to Amante and the revolver to Emilio, but they use them indiscriminately. We returned towards evening and got

the shotgun, which Quico and Emilio delivered to us, on the street close to the house of Emilio. When it commenced to get dark we, I

and Mateo, went to the house of Eusebio. We concealed ourselves on the lot of Eusebio, near the stairs leading to the open veranda.

Eusebio arrived and I discharged both barrels of the shotgun at him at the same time. I then ran to the house of Emilio and returned

the shotgun to him and then returned to the country, where I lived.

When we went to the house of Eusebio Yuson, we met Lucas Figueroa in the street, who asked us where I was going. I told him

that we were going to shoot lieutenant Eusebio with the shotgun.

In testimony whereof, I mark the present this 28th day of May, 1912.

Thumb
JUAN x GATMAITAN.
mark.

Signed in the presence of:

JOSÉ CRAME.

E. W. CROCKETT.

347 1912. Subscribed and sworn to before me this 28th day of May,

LUDOVICO J. MORALES,
Justice of the Peace.

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DEFENDANTS' EXH. "8."

Information or Complaint.

In the Court of First Instance of San Isidro, Province of Nueva Ecija, This 8th Day of October, 1903.

THE UNITED STATES

versus

JUAN GATMAITAN.

The undersigned charges Juan Gatmaitan with the crime of theft, committed as follows:

That the said defendant at midnight of September 25, 1903, in the barrio of San Lazaro, town of Gapan, province of Nueva Ecija, took away with him, with criminal intent, and without using either force or violence, two carabaos belonging to Prudencio Soriano, the value of same being P280. Said carabaos were at the time of their removal at the corral of said Soriano and were later found in the possession of said defendant in a rice field; the said defendant having previously run away. Contrary to the statute in such case made and provided.

(Sgd.)

RAMON MAÑALAC.

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Subscribed and sworn to before me this 21st day of December, 1903, at San Isidro, Province of Nueva Ecija, Philippine Islands.

(Sgd.)

JUSTO AMURAO, *Clerk.*

Witnesses for the Government:

Prudencio Soriano,

Antero Soriano,

Agustin Mariano,

Engracio Nolasco,

Toribio Tadeo,

Fernando Caparas,

Residents of Gapan.

350 DEFENDANTS' EXH. "9."

UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance for the Fourth Judicial District, San Isidro,
Nueva Ecija, P. I.

No. 535.

THE UNITED STATES
versus
JUAN GATMAITAN.

Action for Theft.

Judgment.

In this case the accused, Juan Gatmaitan, is charged with the crime of theft, in that said defendant, on the date mentioned in the information, went to the province of Nueva Ecija and stole two carabaos owned by one Prudencio Soriano, valued at two hundred and eighty (P280.00) pesos. To this charge alleged in the complaint, the defendant pleaded not guilty.

After hearing the testimony of the witnesses for the Government and for the defendant, and after considering the arguments adduced both by the Provincial Fiscal and by Mr. Zoboli, attorney for the defendant, the Court is satisfied that the defendant Juan Gatmaitan is guilty of the crime charged in the complaint and finds from the evidence submitted that the value of the stolen property is
351 over two hundred and fifty (P250.00) pesos.

Therefore the Court finds the defendant Juan Gatmaitan guilty of having violated art. 517 of the Penal Code and sentences him to the penalty of presidio correccional in its minimum and maximum degree, and further finds that the crime was committed with the aggravating circumstances set forth in art. 10 of said Penal Code, inasmuch as the crime was committed in the nighttime, and sentences said defendant, Juan Gatmaitan, to be imprisoned in the Insular Penitentiary of the Philippine Islands, known as Bilibid, for the period of 2 years, 11 months and 11 days, with costs.

Dated at San Isidro, January 2, 1904.

(Sgd.)

ALBERT E. McCABE,
Judge of the Court of First Instance.

The preceding judgment was read and promulgated in open Court by the Hon. Albert E. McCabe, Judge of the Court of First Instance, on this 2nd day of January, 1904, in the presence of the accused and that of his attorney and in the presence of the Prosecuting Attorney.

(Sgd.)

A. GEMPESARO,
Assistant Clerk.

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DEFENDANTS' EXH. "9."

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands, March 13, 1905.

General Register No. 1986.

THE UNITED STATES, Complainant and Appellee,
versus
JUAN GATMAITAN, Defendant and Appellant.

For Theft.

Decision.

The proofs in the case show conclusively that the defendant, on an evening in the month of September, 1903, with the intention of profiting thereby, substracted two carabaos, valued at 280 pesos, belonging to Prudencio Soriano, from the corral where they were kept, against the will of said Soriano.

These facts constitute the crime of theft as provided for and punished in subsection 2 of article 500 of the Penal Code. The value of the effects stolen exceeds 1,250 pesetas and is less than 6,250 pesetas. The judge of the court below acted in accordance with the law when he found the defendant guilty of the crime with which he was charged, and, taking into consideration the aggravating circumstance of nocturnity, imposed upon him the penalty of two years eleven months and eleven days of presidio correccional.

353 The defense in this instance alleges (1) that the complaint does not state facts sufficient to constitute the crime of theft, since there is nothing in it regarding the fact that the taking of the carabaos was without the consent of the owner thereof, which circumstance is one of the requisites necessary to constitute the crime in question; (2) that in fact it was not proven at the trial, nor even attempted to be proven, that the substruction of the carabaos was made against the will of the owner.

The first allegation of the defense lacks foundation because the complaint states that the defendant substracted the carabaos. This word "substract" means that the defendant took possession of the carabaos against the will of the owner, because, as the public prosecutor shows in his brief, "to substract" means to take something away clandestinely without the knowledge and, therefore, without the consent of its owner.

Section 6 of General Orders, No. 58, expressly declares that it is not necessary to use in the complaint the same words as in the law when the complaint states acts or omissions which constitute a crime; it is sufficient if it states the crime in such a way that a

person of ordinary intelligence will immediately know what is meant, and the court can decide the matter according to the law.

As regards the second allegation of the defense, it is not true that it was not proved at the trial that the carabaos were substracted against the will of the owner. The latter says in his statement that the carabaos were stolen and that the defendant was the one who stole the same. In another part of his statement he says that the carabaos were in a corral when the defendant stole them and that the theft was perpetrated in the night-time. He could not, indeed, express in a more emphatic manner the want of his consent to the substruction of the said carabaos when he says they were stolen by the defendant. Robbery implies, necessarily, lack of consent on the part of the owner.

The judgment appealed from is affirmed with the costs in this instance.

It is so ordered.

(Sgd.)

VICTORINO MAPA.

Concurring:

(Sgd.)

C. S. ARELLANO.

FLORENTINO TORRES.

E. FINLEY JOHNSON.

A. C. CARSON.

355 DEFENDANTS' EXH. "10."

MANILA, P. I., Nov. 4, 1911.

Mr. Francisco Amante, Nueva Ecija, P. I., to C. Alcan, Dr.

1	Shotgun cal. 12 L. C. Smith, No. 325808 D. B.	P125.00
100	12 cal. cartouches "Arrow Special 00"	"	7.00
100	12 " " " " 3	"	6.50
1	Ramrod cal. 12	1.50
			<hr/>
			P140.00

Received payment.

C. ALKAN,
D. S. GENSART.

(Documentary stamp at 4¢.)

Goods not delivered yet.

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DEFENDANTS' EXH. "11."

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Province of Nueva Ecija, Fourth
 Judicial District.

Criminal Case No. 2079.

THE UNITED STATES Plaintiff,
 versus
 EMILIO VALDEZ and FRANCISCO AMANTE, Accused.

For Murder.

Complaint.

The undersigned accuses Emilio Valdez and Francisco Amante, as principals, by inducement and cooperation, of the crime of murder, committed as follows:

That on or before the 17th day of March, 1912, in the municipality of Gapan, Province of Nueva Ecija, P. I., the aforesaid accused, Emilio Valdez and Francisco Amante, conspiring with one Juan Gatmaitan, criminally, illegally and voluntarily, induced the latter to accept and supplied him with a two-barreled shotgun for the purpose of killing one Eusebio Yuson, promising to pay him nine hundred pesos (P900.00) Philippine currency; that on the 17th day of March, 1912, at about 8 o'clock at night in the municipality
 357 of Gapan, Province of Nueva Ecija, P. I., the aforesaid Juan Gatmaitan, criminally, illegally and voluntarily, and with malice aforethought, treachery, and by reason of the promise of reward made to him by them, and with the shotgun supplied to him by the two aforesaid accused, Emilio Valdez and Francisco Amante, and in obedience to their instructions, fired one shot at Eusebio Yuson, causing nine (9) wounds on the right hand side of the back with small shot, five of which passed through the lungs and passed out on the right hand side of his chest, from the results of which wounds the aforesaid Eusebio Yuson died almost instantly. Act committed within the limits of this court of first instance and in violation of the law.

San Isidro, Nueva Ecija, P. I., June 21, 1912.

(Sgd.)

ANTONIO VILLAREAL,

Assistant Attorney, Bureau of Justice.

Witnesses:

Perfecta de Guzman, Gapan, Nueva Ecija.

José de los Santos, President of Board of Health, Gapan.

Lucas Figueroa, Gapan.

Victor Marcelo alias Robaya, Gapan.

Mateo Arcilla, Gapan.

Juan Gatmaitan, Gapan.

E. W. Crockett, Captain of Constabulary, Gapan.

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DEFENDANTS' EXH. "12."

THE UNITED STATES OF AMERICA,

Philippine Islands:

Court of First Instance of Nueva Ecija, 4th District.

Criminal Case No. —.

THE UNITED STATES Plaintiff,

versus

EMILIO VALDEZ and FRANCISCO AMANTE, Accused.

For Murder.

Complaint.

The undersigned accuses Emilio Valdez and Francisco Amante of the crime of murder, committed as follows:

That on or before the 17th day of March, 1912, in the municipality of Gapan, Province of Nueva Ecija, P. I., the aforesaid accused Francisco Amante, criminally, illegally and voluntarily, furnished a two-barreled shotgun to the other accused, Emilio Valdez, for the purpose of killing one Eusebio Yuson with the same; that on or before the 17th day of March, 1912, in the municipality of Gapan, Province of Nueva Ecija, P. I., the aforesaid accused Emilio Valdez, criminally, illegally and voluntarily, induced Juan Gatmaitan to kill the aforementioned Eusebio Yuson, promising to pay him 359 nine hundred pesos (P900.00) Philippine currency; that on or about the 17th day of March, 1912, at about 8 o'clock at night, the aforesaid accused Emilio Valdez and the said Juan Gatmaitan, criminally, illegally and voluntarily, with malice aforethought, treachery and by reason of a promise of reward, and with the aforesaid shotgun furnished by the said accused Francisco Amante, fired a shot at Eusebio Yuson, causing nine mortal wounds with small shot on the right-hand side of the back, five of which went through the lungs and passed out on the right-hand side of the chest, from the result of which wounds the aforesaid Eusebio Yuson died instantly. Acts committed within the limits of this court of first instance and in violation of the law.

San Isidro, Nueva Ecija, P. I., July 5, 1912.

(Sgd.)

SANTIAGO LUCERO,

Provincial Fiscal.

Witnesses:

José de los Santos,	Gapan, N. E.
Florentino García,	" "
Rufino Alacon,	" "
Luis de los Santos,	" "
Víctor Marcelo alias Robayo,	" "
Mateo Arcilla,	" "
Juan Gatmaitan,	" "
Braulio Arcilla,	" "
Lucas Figueroa,	" "
Paulino Avelino,	" "
Perfecta de Guzman,	" "
Captain E. W. Crockett,	" "

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DEFENDANTS' EXH. "13."

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Province of Nueva Ecija,
Fourth Judicial District.

Criminal Cause No. 2093.

THE UNITED STATES, Complainant,
versus
JUAN GATMAITAN, Defendant.

For Murder.

Complaint.

The undersigned accuses Juan Gatmaitan of the crime of murder committed as follows:

That on or about the 17th day of March 1912, at eight o'clock in the evening, in the Municipality of Gapan, Province of Nueva Ecija, P. I., the said defendant, Juan Gatmaitan, criminally, illegally and voluntarily, and with malice aforethought, with treachery and in consideration of a price or promise of reward, discharged a shotgun at Eusebio Yuson, with the result that the said Eusebio Yuson received nine wounds on the right side of his back, five of which penetrated the lungs and came out on the right side of the breast of said Eusebio Yuson, producing his almost instantaneous death. Act committed within the jurisdiction of this Court of First Instance and contrary to law.

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San Isidro, Nueva Ecija, P. I., June 21, 1912.

(Sgd.)

ANT. VILLA REAL,

Assistant Fiscal, Bureau of Justice.

Witnesses:

Mateo Arcilla, Gapan.

Lucas Figueroa, Gapan.

José de Los Santos,

President, Bureau of Health, Gapan.

Perfecta de Guzman, Gapan.

I hereby certify that the above is a true copy of its original.

(Sgd.)

ESTEBAN DEL ROSARIO, *Clerk.*

362

DEFENDANTS' EXH. "14."

UNITED STATES OF AMERICA,

*Philippine Islands:*in the Court of First Instance of Nueva Ecija, Fourth Judicial
District.

Civil Cause No. 248.

ANDREA REYES, Plaintiff,

versus

EUSEBIO YUSON, Defendant.

It is hereby stipulated by the parties in the above entitled action that the portion of land in question measuring five varas in width and thirty in length be divided into two equal parts; that the part adjoining the property of the defendant is to be given to the latter and the other remaining part to the plaintiff, on condition that the defendant will transfer to the plaintiff another portion of the land of two varas and a half which will be taken from the part of the land acquired by the defendant from one Policarpo Navarro.

Wherefore, the parties in the above entitled action pray this Honorable Court to order the dismissal of this case, each party to pay one half of the costs.

San Isidro, January 8, 1908.

(Sgd.)

ANDREA REYES,

Attorney for the Plaintiff.

(Sgd.)

CIRILO B. SANTOS.

(Sgd.) EUSEBIO YUSON,

Attorney for the Defendant.

(Sgd.) PEDRO CARMEN.

A true copy:

(Sgd.)

ESTEBAN DEL ROSARIO, *Clerk.*

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DEFENDANTS' EXH. "15."

UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of the Province of Nueva Ecija, Fourth
Judicial District.

Civil Cause No. 248.

ANDREA REYES, Plaintiff,
versus
EUSEBIO YUSON, Defendant.

For Recovery of Possession.

Special Session of the Court of First Instance of the Province of
Nueva Ecija, Held at San Isidro, of said Province, in Compliance
with the Order Issued by the Hon. the Acting Secretary
of Finance and Justice, Dated December 14, 1907.

Order.

At the date set for the hearing of this case, that is to say, on the
8th day of January, 1908, the parties appeared before this Court
through their respective attorneys, and filed a stipulation, now on
record, from which it appears that the questions or controversy be-
tween both parties have been settled and determined.

After an examination of said stipulation and in accordance
364 with the oral motion presented by the attorneys of both
parties, requesting the dismissal of this case, it is hereby
ordered that the same be dismissed without special finding as to
costs.

Given at San Isidro, Nueva Ecija, Philippine Islands, this 8th
day of January, 1908.

(Sgd.)

CHAS. H. SMITH,
*Judge at Large of 1st Instance,
Assigned to the Fourth Judicial District.*

Notice served.

PEDRO CARMEN,
Attorney for the Defendant.

A true copy:
(Sgd.)

ESTEBAN DEL ROSARIO, *Clerk.*

365

DEFENDANT'S EXH. "16."

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Nueva Ecija, Fourth Judicial
 District.

Civil Cause No. 254.

EUSEBIO YUSON, Plaintiff,
 versus

TEODORA NAVARRO and ANDREA REYES, Defendants.

For Easement.

The parties in the above entitled case, through their respective attorneys, hereby stipulate as follows:

That, granting that the plaintiff is entitled to the right of way and to easement of water, he hereby waives such rights under the following conditions:

(a) The plaintiff and his tenants may pass through the rice fields of the defendants provided they are not under cultivation, and in case they are cultivated, said plaintiff, as well as his tenants, shall pass on the embankment of said rice fields but without damaging the plants sown in the fields, and will be liable for any repairs thereof.

(b) The plaintiff and his tenants may haul the crops at harvest times through the lands of the defendants, but under strict
 366 the obligation of repairing any embankment which they may be compelled to cut for the passage of their carts.

(c) The plaintiff shall, at his own cost, build a ditch one vara wide on the boundary line of the land of Teodora Navarro and Maxima Navarro, said ditch to run towards the large ditch which runs to the sitio of Anosep, by paying a reasonable indemnity to the said Maxima Navarro and Teodora Navarro, the plaintiff personally obligating himself to repair said large ditch for the purpose of avoiding any stagnation of the water therein.

(d) The plaintiff and his tenants shall cause their carts to pass through only one road, the shortest and the least distant from the road or public street, and the plaintiff and his tenants will not be permitted to open another road, whether it be a short or a long one.

On the strength of this stipulation the parties settle this case.
 San Isidro, January 10, 1908.

(Sgd.)

CIRILO B. SANTOS,

Attorney for the Defendant Andrea Reyes.

(Sgd.)

LUCIO GONZALES,

Attorney for the Defendant Teodora Navarro.

(Sgd.)

EUSEBIO YUSON.

(Sgd.)

PEDRO CARMEN.

Filed the above letter this 10th day of January, 1908.

(Sgd.)

JUSTO AMURAO, *Clerk.*

A true copy.

(Sgd.)

ESTEBAN DEL ROSARIO, *Clerk.*

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DEFENDANT'S EXH. "17."

UNITED STATES OF AMERICA,

Philippine Islands:

In the Court of First Instance of the Province of Nueva Ecija,
Fourth Judicial District.

Civil Cause No. 254.

EUSEBIO YUSON, Plaintiff,

versus

ANDREA REYES and TEODORA NAVARRO, Defendants.

For Easement.

Special Session of the Court of First Instance of the Province of Nueva Ecija, Held at San Isidro of said Province, in Compliance with the Order Issued by the Hon. the Acting Secretary of Finance and Justice, Dated December 14, 1907.

Order.

On the date set for the hearing of this case, that is to say, on the 10th day of January, 1908, the parties appeared before this Court, through their respective attorneys, and filed a stipulation, now on record, from which it appears that the differences or controversy between both parties have been settled and determined.

After an examination of said stipulation and in accordance with the oral motion presented by the attorneys of both parties,
368 requesting the dismissal of this case, it is hereby ordered that the same be dismissed without special finding as to costs.

Given at San Isidro, Nueva Ecija, Philippine Islands, this 10th day of January, 1908.

(Sgd.)

CHAS. H. SMITH,

*Judge at Large of 1st Instance, Acting
at the Fourth Judicial District.*

(Sgd.)

PEDRO CARMEN,

Attorney for the Plaintiff.

Notice served.

(Sgd.)

CIRILO B. SANTOS.

A true copy:

(Sgd.)

ESTEBAN DEL ROSARIO, *Clerk.*

369 THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of the Province of Nueva Ecija, Fourth
Judicial District.

Criminal No. 2079.

THE UNITED STATES, Plaintiff,
versus
EMILIO VALDEZ and FRANCISCO AMANTE, Defendants.

Murder.

Decision.

Eusebio Yuson lived with his wife Perfecta de Guzman in their house situated on Calle del Corro in the municipality of Gapan, province of Nueva Ecija. On Sunday morning, March 17, 1912, he left the house and went to the cock-pit of San Miguel de Mayumo, where he was in the habit of going every Sunday to gamble on the fighting cocks. At seven o'clock at night of the same day his wife awaited him, for he was to return at that hour, as in fact he did by the last train; and that her husband might see his way she
370 she had ordered a light placed in the zaguan or vestibule. Yuson arrived in a carromata, alighted from the vehicle in front of his house, but he did not enter the building by the front door, that is, by passing through the zaguan, as his wife wished him to do. She was at the window and said to him in a loud voice: "Pass through the zaguan which is lighted, and not by the other door which gives on the stair of the azotea, because that is dark and you may stumble as you are shortsighted." He preferred to pass by the stair to the azotea, and before he had climbed to the top and upon arriving at the second step therefrom, a shot from a gun was heard, the shot from which, entering Yuson's back and passing completely through the thoracic cavity, caused his instantaneous death, and he fell headlong and face downwards on that step. The servants of the house, on learning of the occurrence, cried out: "He has met with a misfortune!" Doña Perfecta, who from her seat near the window had gone to the azotea for the purpose of meeting her husband, on hearing the shot and the cries, fell in a faint; when she came to she succeeded with the aid of the servants in getting up and then went toward the stair where she found the lifeless body of her husband. It was bathed in blood, pierced with shot and was lying near the third or fourth step from the bottom where it had slid from the second step from the top in an oblique or diagonal position. The widow and the other inmates of the house immediately called
out for help and were heard by a nephew of the deceased,
371 who lived in a house near-by and who opened his window and fired three shots in the air with his shotgun for the double purpose of putting the robbers to flight, for he then believed

that an assault had been committed on Yuson's house, and of alarming the town by notifying the people of what had happened. A little while afterwards, that same night, the local authority visited the place of the occurrence, accompanied by the president of the municipal board of health, José de los Santos. The latter examined the body of Eusebio Yuson and found thereon the following wounds: nine gunshot wounds penetrating the right side of the posterior thoracic wall, or the back, and five holes on the right of the front part of the said thoracic wall where the shot had passed out. The majority of the first holes were about two centimeters apart, and others as much as seventeen centimeters. The holes in front were twelve centimeters apart. According to the aforementioned president of the board of health, these wounds affected the right lung and other important organs in the thoracic cavity and caused a hemorrhage which produced the almost instantaneous death of Eusebio Yuson. Captain Crockett, chief inspector of the Constabulary of this province, having learned of the crime, on the following day visited the place of its commission for the purpose of examining the premises and surroundings and taking the necessary information. The result of his examination and investigation appears in his testimony, and that testimony shows that the shot which caused the death of Eusebio Yuson must have been fired from a double-barreled shotgun loaded with shells containing nine small bullets or buckshot; that the persons who fired the shot must have been situated a few yards away from the left side of the stairway, near an inner fence of the yard and protected by the shade of an acacia tree. On the ground at the right side of the stair, the captain found a wad that had been used in a shotgun and also a small leaden bullet embedded in a brick and cement pillar at the top of the stairway and in the same direction in which Yuson ascended when he was shot. This witness spoke of the condition of the yard and said that it was surrounded on all sides by an outer fence, broken down in several places, and by another inner fence which ran alongside the stair close to the trunk of the acacia tree. These facts, brought out in the testimony of the aforementioned Captain Crockett, José de los Santos, Perfecta de Guzman and Cándido Carcía, show the existence and commission of the crime of murder, the object of the present action.

From the testimony of other witnesses presented by the prosecution, namely, Juan Gatmaitan, Mateo Arcilla, Lucas Figueroa, Victor Robaya and Tomás Diego, taken altogether, it is concluded that the violent death of Eusebio Yuson was caused by the defendant Emilio Valdez and the said witness Juan Gatmaitan, and was effected by means of the double-barreled shotgun belonging to the other defendant, Francisco Amante.

373 For reasons which will be set forth hereinafter, Emilio Valdez, from the fall of 1911 or before the time of the rice harvest of that year, had resolved to deprive Eusebio Yuson of his life. With this end in view, he sought to avail himself of the assistance of Juan Gatmaitan and to that end, after the harvest, went to the latter's hut in the rice fields outside the town. Purely

as though it were a matter of a lucrative business, he proposed to Juan Gatmaitan that the latter kill Eusebio Yuson and promised him P900 if he would, but Gatmaitan was afraid and rejected the proposal. One of the details of Valdez' plans was that Yuson should be killed with a firearm, but as he dared not use his revolver for the purpose for fear of incriminating himself, since he had been issued a permit by the Government for the use of that weapon, he preferred to employ the double-barreled shotgun owned by his brother-in-law, Francisco Amante, who was also provided with a permit. Therefore, on Saturday afternoon, the day before the crime was committed, he sent a letter by Mateo Arcilla to Francisco Amante, who was out on the rice plantation, instructing him to bring the shotgun to the pueblo that night because Valdez needed it. Consequently, Amante took the shotgun to Valdez' house and in doing so had himself accompanied in his carromata by Mateo Arcilla, because it was already growing dark and because Arcilla was an old tenant of Valdez. Amante, besides being the latter's brother-in-law, was his manager on the hacienda or lands
374 situated in the barrio of Santo Cristo in Gapan. On the morning of the said Sunday, after mass, Mateo Arcilla went to his employer's house, as he was in the habit of doing. He found Valdez in a room of the ground floor and the latter then proposed to him, also as being a good business transaction for which Valdez would pay P1,000 and furnish the shotgun, that Arcilla kill Eusebio Yuson. Arcilla through fear rejected the proposal and, besides, having understood furthermore that the act contemplated was a bad one, called the attention of his employer to that fact and asked him why he was trying to kill Yuson, since the latter was a very good man and very charitable to the poor. Valdez, despite the rejection of his proposal, first by Gatmaitan and afterwards by Arcilla, did not desist from his criminal purpose and, in order thenceforth to maintain secrecy in his plans, took good care to impose silence upon the said witnesses under the threat that if they betrayed him he would either kill them or order them killed by some of his large following. The said Sunday, March 17th, was the day chosen by Valdez for the commission of the crime, and he selected the time when Eusebio Yuson would return for the night to his house from the cockpit of San Miguel de Mavumo. At about five o'clock in the afternoon Valdez went in his carromata to the rice field, looked for Juan Gatmaitan in the latter's shack and, having found him, invited him to make a ride through the streets of the town.
375 Gatmaitan accepted and was taken to Valdez' house where he waited outside while Valdez went in to get and load his shotgun; a few moments afterwards Valdez came down the stairs of the azotea and from the yard handed the shotgun over the fence to Gatmaitan, who was waiting for him outside in the street. Valdez then immediately joined Gatmaitan and they both walked in the direction of Eusebio Yuson's house until they arrived at a corner, between an empty store near Yuson's yard and Dr. Adorable's house on the other side of the street, where they halted. In order better to prepare for the deed and insure its impunity, Emilio Valdez, on

returning to his house with Gatmaitan and finding Mateo Arcilla waiting for him in the kitchen, ordered the latter to pass along the street in front of the town hall to see if the municipal police went out on patrol, and charged Arcilla, in case they did, to notify him at the said corner where Valdez would wait for him. That same afternoon Valdez had spoken to Lucas Figueroa and offered him P20 to watch the movements of Eusebio Yuson and notify the latter's arrival to Valdez, who would await Figueroa at the corner aforementioned. A little after seven o'clock at night and immediately after Valdez and Gatmaitan had received notice from Figueroa that Yuson's carromata was approaching, Valdez, together with Gatmaitan, who carried the shotgun in his hand, entered the yard surrounding the house by passing under the fence; they then
 376 posted themselves near a large acacia tree to await Yuson who, almost at the same time, alighted from the carromata and entered the yard. Finally, while Yuson was climbing the stairs of the azotea and had reached the second step from the top, Valdez ordered Gatmaitan to fire at Yuson, but as Gatmaitan either did not wish or did not know how to shoot, Valdez helped him and personally fired the shot that caused the death of Yuson, as hereinbefore related.

The crime committed by Valdez and Gatmaitan is that of murder, provided for and punished by Article 403 of the Penal Code and qualified by the specific circumstances of known premeditation, treachery, and of price or promise of reward. No great effort is needed to prove that the crime under prosecution was attended by these three circumstances. Any one of them is sufficient to qualify it as murder, and in this case the other two should be considered as generic aggravating circumstances; adding to these the aggravating circumstances of nocturnity, because the crime was purposely committed at night, the result is that the murder in question was perpetrated with three aggravating circumstances and without any mitigating one. Emilio Valdez is a highly educated man and is very prominent in the pueblo of Gapan both on account of his social standing and his wealth.

The evidence shows beyond all reasonable doubt that Emilio Valdez is guilty of the murder of Eusebio Yuson, as a principal, by inducement and by direct participation: inducement, because he ordered and paid others to kill Yuson; and
 377 material participation, because Valdez himself, as we have seen, co-operated in the perpetration of the crime.

Emilio Valdez offered no serious defense in his behalf. He merely produced evidence tending to prove: (1) The impossibility of having caused the death of Yuson with Francisco Amante's shotgun, because this weapon was in the hacienda warehouse during the night of Saturday, March 16th, and for some days thereafter; and (2) an alibi, that is, the impossibility of Valdez' having committed the crime, because, on the date of its commission, from five o'clock in the afternoon until after seven o'clock at night, he was at the house of a woman named Guillerma Liuag in the municipality of Gapan; that thence he went directly to his house, where he had

scarcely arrived when he heard the first shot; that two minutes afterwards he went to the window and from there called to the municipal police in the town hall, thus bringing the occurrence to their attention, and asked them why they did not go immediately to the place.

The first point of defense above mentioned is inadmissible. The witnesses presented in its support were very partial and interested. Andrea Reyes is the mother of the defendant Valdez. Engracio Nolazco is an old tenant of the Valdez family. Andrea Reyes, upon being cross-examined by the fiscal, testified that she was
378 asleep at eight o'clock of the night when she said that Francisco Amante went to the threshing floor, and that she did not awake nor see the latter again until the following day at the time when Amante left the warehouse to go to take the train for Manila. So that, during the night, while Andrea Reyes was sleeping, the shotgun might have been taken from the warehouse without her knowledge. The old man Nolazco said that he had a house where he lived alone; nevertheless he pretended that he slept in the warehouse, though no special reason is known why he should have passed the night there. As regards the alibi set up by Emilio Valdez, it should be rejected on account of the interest and partiality shown by the witnesses brought forward to support it, and because this alibi, according to the evidence introduced by the Government in rebuttal is false. The witnesses presented in support of the alibi are: Matea Domingo, a servant long in the service of Emilio Valdez; Miguel Liuag, a candidate for president at the last election and in whose behalf the defendant Valdez actively worked as his principal supporter; Antonio Liuag, a farm laborer, who as it is said is the best "gallo" of the party of Valdez and Liuag, the word "gallo" meaning that Liuag would never separate from them or their party; and, finally, Gil Abad who, as he testified, while passing in front of
379 the house of Guillerma Liuag at about half past six o'clock in the evening, saw Valdez and Miguel Liuag looking out of the window and invited them to come with him and play dominoes in Dr. Pardo's pharmacy; notwithstanding, Abad did not go to this pharmacy but to that of Dr. De los Santos. Abad denied having heard shots on the night of the occurrence, but nevertheless, on cross-examination, he contradicted himself, for he gave it to be understood that he not only heard those shots, but also was aware of the disturbance made by the people and of the fact that they all closed their houses in fear of the occurrence, which was thought at the time to be an assault by robbers upon Yuson's house.

It is obvious that witnesses of this kind can not successfully support an alibi, and more especially when, as before stated, it has been disproved by rebutting evidence. Joaquin Garcia, a witness for the prosecution, testified that after five o'clock in the afternoon or before sunset of the Sunday when the crime was committed, he went to Guillerma Liuag's store, situated in the lower part of the latter's house, and while there saw Emilio Valdez go out of the door and direct his steps toward the east of the rice field. Several of the police officers who on that night went to the scene of the crime stated in their rebutting testimony that they did not hear Emilio Valdez

shout to them from his house, and this, notwithstanding that his house is but a short distance from the town hall where they could very well have heard him, however little he had raised his voice. One of these policemen, a corporal, who was mentioned by Valdez as being the same corporal with whom he spoke when this officer chanced to pass along the street in front of the window of the house, testified that when he saw and spoke to Valdez it was not two minutes after the shot, but a long time afterwards.

So, then, the evidence of the defense does not prove Valdez' innocence. His salvation must be sought, not in his evidence, but in that of the prosecution. If the evidence of the prosecution is not conclusive and any reasonable doubt should arise from its insufficiency, Valdez may be favored by the benefit of that doubt; otherwise, it must inevitably be held that he is guilty. The defendants understood this and, for the purpose of discrediting the principal witnesses of the prosecution and impeaching their testimony, proved: (1) That Gatmaitan, Arcilla and Figueroa pleaded guilty, in the justice of the peace court, to the charge of murdering Yuson, exactly as they were charged in the complaint there filed by Captain Crockett; (2) that Gatmaitan was convicted of the crime of theft and sentenced therefor to two years, eleven months and eleven days of presidio correccional; and (3) that Gatmaitan and Figueroa, prior to the trial, subscribed and swore to affidavits, the contents of which

do not agree with the testimony respectively given by them at the hearing of this case. The defendants also tried to show that several complaints were filed in this cause, and alleged that this difference proves that Gatmaitan, Arcilla and Figueroa made different statements to the fiscals each time that the latter questioned them in the investigation. The court, however, is of the opinion that, notwithstanding these claims made by the defense, the testimony in question has not been destroyed, but must be considered and taken into account in rendering judgment in this case.

The reason why Arcilla and Figueroa pleaded guilty before the justice of the peace is explained by these men in their testimony both on direct examination and in rebuttal. Their explanation should be accepted as satisfactory, for it is seen that these witnesses are very ignorant and entirely lacking in education. It only needs to be remembered that, in order to give an idea of the years or months, they refer to the last year's crop or to that of the year before, or to the rainy season or to the dry months; that, to determine the hours of the day, they mark the height of the sun over the horizon, and, to fix distances, they know of no other measure than the rope used on a carabao, or compare the distance they are questioned about with that lying between the chair in which they sit and the building or the corner in front of them. With respect to Gatmaitan's confession let it be borne in mind that it in no wise conflicts with his testimony, for he admits now, as he did before the trial, that he assisted in killing Yuson.

That Gatmaitan is a criminal and a convicted thief, is a fact that in no wise favors Valdez. Valdez would not have dared to make

the criminal proposal to an honorable person, for instead of finding an accomplice or assistant he would have found an accuser. It is only thieves who allow themselves to be seduced by filthy lucre, though in exchange for the commission of a crime. Valdez could not have found another better instrument than Gatmaitan. He knew his history and his past record. It is Valdez who has brought into the record of this case the judgment of conviction rendered against Gatmaitan for theft. It is understood why Valdez, after having sought Gatmaitan, first tried to win his good will and afterwards corrupt him with money.

The fact that before the trial Gatmaitan and Figueroa swore to statements that differed from those they made under oath at the trial, was explained by them when they testified as witnesses both on direct and on cross-examination. We must not lose sight of the state of mind of those witnesses when they subscribed and signed their affidavits. They had been solemnly threatened with death at the hands of Valdez or his band, if through their statements or revelations Valdez should be imprisoned. They testified
383 that this threat and the consequent fear that it would be carried out weighed on their minds while those affidavits were being drawn up. Nothing in the record shows that the explanations of these witnesses are false. On the contrary, it is seen that as in the first affidavit by Figueroa the affiant makes no mention whatever of the name of Emilio Valdez, in his second affidavit, made three days after the first, he finally does name Emilio Valdez; and this is because at the time Figueroa made each of these affidavits he was already in the power of the Constabulary, and it is natural that he should believe himself safer in that situation from the threats or the vengeance of Valdez. There is no evidence whatever that Figueroa made such statements solely and exclusively under hope or promise of safeguard and protection. As regards the affidavit of Gatmaitan, it is to be noted that its contents are not in conflict with his testimony in this case, but that such testimony is virtually an amplification of that affidavit. Gatmaitan said that through fear of Valdez he did not in the beginning testify to all that he knew; but when he testified in the hearing of the case before this court, he finally told the whole truth.

That the complaint filed in this case by the fiscal Villa-Real, an assistant attorney of the Bureau of Justice, differed from that subscribed by the provincial fiscal and which was read to the defendants Valdez and Amante, does not necessarily mean
384 that the witnesses for the Government gave contradictory or false information. Such a discrepancy will sometimes arise from an error or a misunderstanding on the part of the complainant. For this reason the law allows him to amend the complaint, both in substance and form, before being read to the accused and answered by them.

There are many who believe that the mere fact of a person's offering to testify in a case as a witness for the Government, is a sufficient reason for denying him credence, in spite of his oath to tell the truth; they also believe that if such a person was in the power

of the Constabulary and while in its custody made statements, the statements are false, and are only the result of inducements or threats or else a promise of clemency or protection. But we have seen that Juan Gatmaitan is accused of the same crime of murder with which Valdez and Amante are charged; and that Gatmaitan upon taking the witness-stand, was warned by the defense that an incriminating testimony given by him against Valdez and Amante might hang them; likewise that incriminatory statements by him against himself might result in his sharing the same lot, despite any promise of protection and liberty which might have been made to them by any prosecuting officer, clerk of court, member of the

Constabulary, or jailer. Gatmaitan was informed of all this; and if, notwithstanding such information and the warning which was so emphatically addressed to him by the defense, he persisted while testifying in inculpatory others and incriminating himself, the court certainly finds no manner of reason to reject that testimony. Should it be thrown out merely because Gatmaitan was a witness for the Government? It is evident that it should not. Should we reject that testimony solely on account of a suspicion that the witness, under promise of liberty, might have been taught or induced to say what he did? This is incredible, the more so if we take account of the fact that the prosecuting attorney instead of asking for the release of Gatmaitan, has, according to the record, recently filed a formal complaint in this court, under No. 2093, against Gatmaitan, charging him with the murder of Yuson. Up to the present time no formal complaint has been presented against Arcilla and Figueroa, but, as has been seen, they were charged with this crime in the preliminary investigation made in the justice of the peace court and by reason of the complaint are now prisoners in the custody of the Constabulary, by order of the justice of the peace. Shall we also say that these witnesses were so detained for the purpose of drawing from them incriminating testimony against Amante and Valdez? This is a supposition which

385 these witnesses deny and, consequently, it appears to be more just and reasonable to believe that, if they are now in the

386 custody of the Constabulary, it is for the double purpose of protecting them from the vengeance of Valdez and Amante and of withdrawing them from the powerful influence of Valdez and his followers, who otherwise might make them retract their previous statements. The record contains a fact in support of this opinion: The witness Braulia Arcilla testified that, after Valdez had sent for her several times, she went to his house and he there instructed her to make a statement favorable to her brother Mateo Arcilla, in order that the latter might be set at liberty, and Valdez said that not only would he defray the expenses of the attorney who prepared that statement, but also those incurred by Braulia in going to Cabanatuan to see Mateo. At the same time Valdez instructed Braulia that when she saw her brother Mateo she should tell him to plead guilty, for such an admission was of no importance as the latter could withdraw it or change it at any time afterwards. On that same occasion Valdez and his sympathizer, Mariano Suniga, intended to

write a letter to Mateo Arcilla to instruct him to plead guilty, but they desisted from their purpose on reflecting that such a letter might prejudice Valdez. Of course Valdez denied having given such instructions to Braulia Arcilla, but there can be no doubt that it is she, and not Valdez, who told the truth in this matter. Far from there having been shown in this case any sufficient
387 reason to reject the testimony of Gatmaitan, Arcilla and Figueroa, the court is of the opinion that this testimony is in all respects worthy of credence. They were not friends, relatives nor employees of the deceased, neither did they owe favors to him or to his family. They are not enemies of the defendants and have not been paid for testifying against them. It has already been said that Arcilla was an old tenant of the Valdez family. They had no favors or benefits to expect by testifying against Valdez; on the contrary, by telling the truth, they have prejudiced and incriminated themselves.

A good deal of talent is required to invent a drama such as these witnesses have related, the denouement of which was the murder of Yuson; and for such witless persons to have been able to reproduce that drama here by narration we are forced to admit that they did in fact act the very role which each of them attributed to himself.

Their testimony is attacked as being unlikely and suspicious, but nevertheless it is strongly corroborated by the evidence of record. The promise of money, mentioned by Gatmaitan as made to him by Valdez, is confirmed by Arcilla, to whom a like promise was made. Valdez' letter, which Arcilla testified he delivered to Amante, instructing the latter to bring his shotgun to the pueblo, was seen and read by Victor Robaya, a disinterested and impartial witness in
388 this case. The delivery of the shotgun by Valdez to Gatmaitan was witnessed by Arcilla. At the corner of the street near Yuson's house, Tomas Diego, who is also an absolutely impartial witness in this case, first saw Valdez alone and a moment later saw him accompanied by another man, who must have been Gatmaitan. The notice of the arrival of Yuson, which Gatmaitan said was given by Figueroa to Valdez and Gatmaitan, is confirmed by Figueroa, who also confirmed the fact of his having been offered money by Valdez to watch Yuson's movements. These three witnesses spoke of words addressed to Yuson by his wife, when she told him to enter the door of the zaguan; they alluded to the shouts of the servants of the house in giving the alarm and announcing the misfortune that had befallen their master; and, finally, they mentioned the shots discharged from a firearm. All these particulars are corroborated by the testimony of the widow and the other residents of the place, including the witnesses of the defense themselves with regard to the shots. The details of the place or scene of the crime, as described by these witnesses, were verified by the inspection there made by Captain Crockett. If these witnesses had not been in the yard on the night of the occurrence, it would be impossible to explain how they could have given those details. There is on evidence that they were ever in the said yard either before or after the

crime. It is presumed that they were not acquainted with
389 the yard, because they were farm laborers living out in the
rice fields and because the lot in question was enclosed by a
fence.

In order to determine the weight that should be given to the testimony of these three witnesses, that of any particular one should not be analyzed or examined apart from that of the others, as has been done by the defense. Both logic and sound judgment require that the testimony should be considered as a whole, and we must seek the intimate relation which exists between that of one and the other, without ever losing sight of the support furnished such testimony by other sources. By any other method of examination, no witness, either of the prosecution or of the defense, could be deemed to be truthful, nor could the testimony of any witness be considered conclusive. With respect to the disagreements found in details of scant importance—granted that such disagreements appear in the evidence—they ought not to obscure nor cast doubt on the substantial or essential features of the facts. On the contrary, it should be borne in mind that discrepancies in testimony allay the suspicion of any conspiracy or collusion. If the principal facts are fully proven, the lack of satisfactory explanation of a minor detail, should there be such in the evidence of the prosecution, can not support a reasonable doubt.

The motives for the crime, as shown by the prosecution, were two actions which the deceased, Eusebio Yuson, successively
390 maintained against the family of Emilio Valdez, concerning the survey of lands in the barrio of Santo Cristo, Gapan, and an easement of water on these lands. Although both suits were settled by compromise between the litigants, it is a fact that after the adjustment the friendly relations that had previously united them became notoriously strained to the extent that the Valdez family ceased to visit the house of Yuson and refused to greet the latter or to speak to him on the streets and other parts of the pueblo. Attorney Santos, as a good witness and relative of Valdez, testified that the adjustment referred to was satisfactory to both litigants and that after that adjustment Yuson and Valdez met each other one day in the cockpit, shook hands there, talked with one another and sat down together. That which Mr. Santos relates may have occurred once, does not mean that the old friendly relations, interrupted by the suits, had been renewed, neither does it preclude what the witnesses for the prosecution testified, to wit, that the two families in question refused to greet and talk to each other in the street, and that the visits between the Valdez and the Yuson families had not been resumed. The proof that neither Valdez nor any member of his family attended Yuson's funeral is very significant, since the deceased was a prominent man of his pueblo and had met with a
391 violent death. One can never foretell the consequences of a disagreement or enmity until such consequences are seen. It would seem that a disagreement of three years' standing could not give rise to so atrocious a crime as the murder of Yuson;

but after that murder was committed by Valdez, it would be improper to assign the motive to any other cause than this previous enmity toward the deceased. The widow Perfecta de Guzman testified that the defendants Valdez and Amante were very envious of her husband because he was very active and industrious and prospered in the pursuit of his occupation of agriculturist. If this is so, as it must be, because the widow was not contradicted on this point, it is easy to understand how the old animosity of Valdez and Amante toward Yuson must have revived at the time of last year's harvest on their seeing that their enemy, Yuson, succeeded better than they, perhaps favored by that irrigation ditch which was the subject-matter of the aforementioned legal proceedings. Envy has not been less prolific in crimes than hatred. Aside from this, the witness Rufino Alacon spoke of a certain threat which Valdez and Amante, while in the irrigation ditch referred to, proffered against Yuson, saying that "his day would surely come." This threat was not denied by Valdez, nor does the record show that he afterwards withdrew it.

The evidence of the prosecution, in so far as it concerns the defendant Francisco Amante, is not, in the judgment of the court, sufficient to establish his guilt nor his participation in the crime. Although it was proven that Amante was at outs with Yuson and that the said Amante, after receiving the letter from his brother-in-law, Valdez, went to the latter's house to deliver the shotgun to him, yet evidence is still wanting to show that Amante knew for what use Valdez needed the weapon and that Amante consented to that use. Both of these points may be presumed, taking into account the relationship between Amante and Valdez and the fact that they were both at outs with the deceased. Such a presumption may also be drawn from the fact of Amante's having taken the shotgun to Valdez, at night, and directing Arcilla to keep silence in the matter; but against such presumptions we have the stronger one of this defendant's innocence. Moreover, Amante testified as a witness in his own behalf and denied knowing that Valdez would use or intended to use the shotgun to commit any crime. Clear and positive proof, and not mere presumptions or conjectures, is required to convict an accused.

For all the foregoing reasons, the court pronounces judgment and freely acquits the defendant Francisco Amante, for insufficiency of evidence, with one-half of the costs de officio, and his immediate release is ordered: the other defendant, Emilio Valdez, is found to be guilty, beyond reasonable doubt, of the murder charged against him in the complaint. The said Emilio Valdez is therefore sentenced to the penalty of death, to indemnify the family of the deceased in the sum of P2,000, and to pay the other half of the costs. For the review of this judgment in so far as it refers to Emilio Valdez, let the record of this original case, together with all the testimony and evidence taken, be forwarded in consultation to the Honorable Supreme Court of the Philippine Islands,

whether or not this judgment is appealed from by the said Valdez. It is so ordered.

Given in San Isidro, Nueva Ecija, this 16th day of July, 1912.

(Sgd.)

ISIDRO PAREDES,

Acting Judge, 4th Judicial District.

394 Thereafter and on the 26th day of July, 1912, a motion for a rehearing was filed, as follows:

(Heading and Title Omitted.)

Motion for Rehearing.

Emilio Valdez, the accused in this case, through his undersigned attorneys, states to the court:

1. That on the afternoon of the 16th of July, 1912, there was read to him the sentence rendered in this case, by virtue of which this petitioner was condemned to the penalty of death as the principal of the murder committed on the person of Eusebio Yuson. The judgment is supported by and appears to have its principal justification in the statement and evidence of one Juan Gatmaitan, a witness for the prosecution and the most important and principal witness of the prosecution, who during the trial, assuming that he had a direct participation in the act complained of, imputed the material commission of the crime to this petitioner, with whom, as he said, he went to the place where the crime occurred, and they together discharged the shotgun which caused the death of Eusebio Yuson.

2. On the day following that on which the judgment of conviction was read, that is to say, on the morning of the 17th of July, 1912, the aforesaid Juan Gatmaitan made a spontaneous, free, voluntary and energetic retraction of his statement made during the
395 trial, publicly stating, under oath taken before a notary public and in the presence of several persons, among whom there were members of the police on duty in the provincial jail of San Isidro (Nueva Ecija), that everything that he stated before the court was that the officials of the Constabulary told him and forced him to state after torturing him during a period of three weeks and telling him that nothing would happen to him in spite of whatever he might say, even though it should involve him personally, and that, on the contrary, they would set him at liberty and would give him one hundred pesos; but that in reality he was ignorant of who killed Eusebio Yuson, and *know* absolutely nothing about what had been done on the night in question. The original of this sworn declaration is attached to the present petition as an integral part of the same.

3. Scarcely had the witness Gatmaitan signed the foregoing statement and retraction when the Constabulary again took him in custody and now have him in their power in Cabanatuan, in spite of the fact that the court ordered that he was to be held in the provincial jail at San Isidro. This is to give notice that during the trial of

this case, and since about the middle of the month of May, 1912, Juan Gatmaitan was in the custody of the Constabulary, and was only sent to the provincial jail after sentence in this case had been rendered and published.

4. The petitioner has been informed, and believes that this information is correct, that Juan Gatmaitan has been induced by the Constabulary in Cabanatuan to make another statement adverse to his retraction. He has resisted energetically, and appears to be resolved to stick to his retraction for all time and in spite of any damage that his person might suffer by such attitude.

By virtue of everything that has been set forth and the attached sworn statement, the petitioner asks the court to order the immediate opening of the case in order to hear the statement of Juan Gatmaitan and others who, in corroboration of his statements, may be brought before the court.

It is also prayed that, pending the resolution of this petition, and without prejudice to later orders that the court may deem it well to issue with respect to the person of Juan Gatmaitan, the transfer of this individual to the provincial jail be ordered, as decreed by the judge in the case.

Manila (for San Isidro, Nueva Ecija) July 25, 1912.

(Sgd.)

SINGSON, LEDESMA & LIM AND
CHICOTE & MIRANDA,

By ALFREDO CHICOTE,

Attorneys for the Accused.

Filed this 26th day of July, 1912, with affidavit of Juan Gatmaitan and also affidavit of Mr. Chicote.

(Sgd.)

ESTEBAN DEL ROSARIO,

Clerk of Court.

397 Document No. 30, p. 34 of the Notarial Register.

I, Juan Gatmaitan, of age, and detained in the provincial jail of this province, under oath affirm as follows:

That on one of the days of the month of May last I was arrested by the Constabulary and taken by them to Cabanatuan and on arriving there I was on various occasion questioned by the lieutenant called Stephen and by his soldiers in regard to the death of "tininting Sebio" in Gapan (Eusebio Yuson) and they made me confess that I and Emilio Valdez are the one who killed him but as this was not the truth I did not want to say so, for which reason they then tortured me during a period of three weeks, more or less, they did not allow me to sleep night or day and, one by one, the soldiers who were there roused me each time that I started to sleep a little and forcibly obliged me to confess that I and Emilio Valdez were the ones who carried the shotgun that Lucas Figueroa and Mateo Arcilla said they saw on the day on which Eusebio Yuson was murdered. And as they could not make me confess that I and

Emilio Valdez were the ones who had committed the murder, lieutenant Stephen ordered me shot and told me they would say, that I had attempted to escape. By reason of my fear at this statement I said to the soldiers that if they would tell me what they wanted me to state I would do so, and therefore they took me to Factoria (San Isidro) to the captain's house, and Buencamino is the one who prepared and showed me what I was to state, as well as Mateo 398 Arcilla and Lucas Figueroa, and after that the captain and Buencamino promised me that they would not abandon me and that they would not allow me to remain a prisoner, and that they would also give me P100.00 after the trial, the money to be supplied by the wife of "tininting Sebio." But the actual truth is that I do not fully know the circumstances in regard to the death of "tininting Sebio" not do I know who killed him. And if I did not state the truth in the court of first instance, in spite of the facts that the attorneys assured me that I was at liberty to tell the truth, it was because I knew I was yet in the power of the Constabulary, and by reason of my fear of the captain I dared not state the whole truth as I do now while a prisoner in the provincial jail. I knew that Emilio Valdez was condemned to the gallows; for this reason my conscience would not permit that Emilio Valdez should suffer by reason of my statement, he really not being guilty; and, for the further reason that the captain and Buencamino have not kept their promises to me.

In witness of which I affix my thumb mark to this statement in witness of everything by me stated herein in the provincial jail this 17th of the month of July, 1912.

(Marked) JUAN GATMAITAN.

In the presence of the witnesses:

(Sgd.)

SALVADOR DE GUZMAN AND
FLORENCIO MIRANDA.

Stamp, 20 centavos.

THE UNITED STATES OF AMERICA,

Philippine Islands:

399 In the Municipality of San Isidro of the Province of Nueva Ecija this 17th day of July, 1912, I being present in the guard-room of the provincial jail of the aforesaid province, there personally appeared before me the prisoner Juan Gatmaitan, whom I certify to be known to me to be the person who executed the foregoing document, and after having read the same to him he stated that it was an act of his free will and execution. The affiant did not have any personal certificate of registration by reason of being a prisoner in the jail.

Before me:

SALVADOR DE GUZMAN,
Notary Public.

My commission expires December 31, 1912.

400

Affidavit of Alfredo Chicote.

(Heading and Title Omitted.)

I, Alfredo Chicote, having taken the oath required by law, state: That I am one of the attorneys for Emilio Valdez, the accused in the above-entitled cause; that said accused has been sentenced to the death penalty; that the sentence is mainly based and founded on the statement of one Juan Gatmaitan, who, during the trial, testified that he and Emilio Valdez, with a shotgun furnished by the latter, on the night of the 17th day of March, 1912, in the municipality of Gapan, Nueva Ecija, went to the lot on which the house of Eusebio Yuson is located, and once there, they laid in ambush for the said Eusebio Yuson and fired a shot into his back which produced instant death. In addition to this Juan Gatmaitan declared that, prior to this occurrence, Emilio Valdez proposed the execution of the crime and offered him a reward of nine hundred pesos.

That said Juan Gatmaitan was accused by complain-t of the fiscal of the same crime and before the same court, after the rendering and publication of the capital penalty against Emilio Valdez; and on being notified of the complaint, he pleaded not guilty, which pleading he made on four different occasions in reply to four readings and interpretations made by four different persons at the instance and request of the judge presiding at the trial; 401 that after this Juan Gatmaitan was, by decree of the judge, taken to the provincial jail, and on arriving at the door of the jail he resisted entering the prison and addressing himself to the corporal of the insular police told him that he should remind the captain of what he had promised. One of the attorneys of Emilio Valdez petitioned the provincial governor for permission to go to the jail with a notary public for the purpose of taking the sworn statement of the accused Juan Gatmaitan, and the notary, inside of the jail, in the guard-room of the prison police, in the presence of several policemen, of the attorney de officio of Gatmaitan, of two witnesses brought for that purpose, and other persons found present at that place, took the sworn statement of Gatmaitan the original of which is attached to this affidavit.

That in addition to what is set forth in the aforesaid affidavit of Juan Gatmaitan, he stated, after he had signed same, that he was resolved to maintain this statement, by reason of its being the only truthful one, and in spite of any damage that he might suffer by reason thereof; making this statement in a spontaneous, energetic and persistent manner.

That all above set out is the truth in accordance with the knowledge of the facts which he, as attorney for Emilio Valdez, had obtained from correct sources.

(Sgd.)

ALFREDO CHICOTE.

Subscribed and sworn to before me this 25th day of July,
402 1912. The affiant exhibited to me his personal certificate
of registration No. F-25410, issued in Manila on the 5th of
March, 1912.

(Sgd.)
[SEAL.]

MATIAS SANCHEZ,
Notary Public.

My commission expires December 31, 1912.

403 On July 29, 1912, the defendant Emilio Valdez filed a
motion requesting that the stenographic notes taken at the
trial be immediately transcribed and announcing his intention to
appeal to the Supreme Court of the Philippine Islands from the
decision rendered.

On July 30, 1912, the defendant Emilio Valdez, through his at-
torneys, filed a motion, without prejudice to the hearing of the
motion for a new trial, praying that the record be sent up for re-
view to the Supreme Court of the Philippine Islands.

404 THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of Nueva Ecija, Fourth Judicial District

Criminal Case No. 2079.

THE UNITED STATES, Plaintiff,
versus
EMILIO VALDEZ, Defendant.

For Murder.

Answer to the Motion for a Rehearing.

Now comes the undersigned, and, in answer to the motion for
a rehearing presented by the accused Emilio Valdez to the Honor-
able Court, respectfully states:

I.

That on the 27th day of July, 1912, immediately after the sworn
retraction made by Juan Gatmaitan in the provincial jail of Nueva
Ecija, in which he alleges that he was maltreated by the Constabu-
lary at Cabanatuan, and on which the accused bases his motion for
a rehearing, Col. Thomas I. Mair, Director of the Central District
of Luzon, made an official investigation of the facts alleged in the
aforesaid statement, taking the declarations of witnesses, among
them that of the same Juan Gatmaitan, who made a counter-affi-
davit, in which he said that he had been at all times well treated

405 by the Constabulary, that the sworn declaration made by him in the provincial jail of Nueva Ecija was prepared by Mr. Silvino de Guzman by and for himself, that everything therein stated is false, and that what he stated before the Honorable Judge Isidro Paredes and before Captain E. W. Crockett and the fiscal Villareal is the truth. There are attached to this document and made a part of the same counter-affidavits marked "A," "B," "L."

II.

That during the time that Juan Gatmaitan was in the power of the constabulary in Nueva Ecija he was always well treated and never molested, maltreated, much less tortured, instructed or induced to testify against Emilio Valdez by means of intimidation, force or promise of liberty or reward by any constabulary officer or soldier, nor by the private prosecutor, Felipe Buencamino, Jr. There are attached to this document and made a part of the same counter-affidavits marked "A," "C," "D," "E," "F," "H," "J," "K," "G," "O."

III.

That the undersigned, designated by the Honorable Attorney-General to prepare and direct the prosecution of the case of the United States versus Emilio Valdez and others, for murder, took the statements of the government witnesses, among them that of Juan Gatmaitan, who, after being informed that he should testify to nothing but the truth and that he would be prosecuted for perjury if he did the contrary, freely and spontaneously and without
406 any promise of liberty or reward, and no constabulary being present at the time, stated everything he afterwards testified to on the trial of the case before the Honorable Judge Paredes; and upon being questioned by the undersigned as to whether he had any complaint to make in regard to the treatment given him by the Constabulary, said he had no complaint to make and was satisfied with his treatment.

IV.

That the judgment, by virtue of which Emilio Valdez was condemned to the death penalty, is based and founded not only on the statement of Juan Gatmaitan but also on the statements of Mateo Arcilla, Lucas Figueroa and Tomas Diego, duly corroborated, and that even without the statement of Juan Gatmaitan, and only with the statements of the last mentioned witnesses and the other circumstances of the case, there are more than sufficient grounds to justify the condemnation of Emilio Valdez, as may be seen from the record and the extensive and well founded judgment of the Honorable Judge Isidro Paredes.

V.

That when Juan Gatmaitan was informed of the complaint against him as co-principal in the murder of Eusebio Yuson, he

did not state that he was not guilty, but the Honorable Judge Paredes made of record the plea of not guilty in view of the fact that Juan Gatmaitan said that even though he had been at the place where the murder took place he was not the one who
 407 pulled the trigger of the shotgun, the discharge of which killed Eusebio Yuson.

VI.

That it is not true, according to the information and belief of the undersigned, that Juan Gatmaitan was induced to make a sworn statement adverse to his retraction or that he objected to entering the jail. His counter-affidavit was made freely and spontaneously. (See Exhibits "A," "B," and "C," "M," and "N."

For the reasons above set out the undersigned respectfully prays that the motion for a rehearing be denied.

Manila, for San Isidro, Nueva Ecija, August 9, 1912.

(Sgd.)

ANTONIO VILLAREAL,

Assistant Attorney, Office of the Attorney-General.

THE UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

I, Antonio Villareal, Assistant Attorney in the Office of the Attorney-General, under the necessary oath required by law, state that I am the attorney designated by the Honorable Attorney-General to prepare and direct the prosecution in the case of United States vs. Emilio Valdez and others; that I have read the foregoing document and am informed of its contents; that everything therein stated based on my own knowledge of the facts is true to the best of my knowledge and belief and that everything therein stated upon
 408 information comes from correct sources, which is true, according to my best belief.

(Sgd.)

ANTONIO VILLAREAL,

Assistant Attorney, Office of Attorney-General.

Subscribed and sworn to before me this 9th day of August, 1912 the affiant first exhibiting to me his personal certificate of registration No. F-9603, issued in Manila, on the 22nd of January, 1912.

(Sgd.)

DIEGO GLORIA,

Assistant Attorney, Bureau of Justice.

Authorized under Sec. 36, Act 1407 to administer oaths.

Filed this 10th day of August, 1912.

(Sgd.)

ESTEBAN DEL ROSARIO,

Clerk of Court.

Receipt of copy of above duly acknowledged by attorneys for defendant.

EXHIBIT "A."

(Translation.)

CABANATUAN, NUEVA ECIJA, July 26, 1912.

I, Juan Gatmaitan, swear and truly state before Colonel Thomas I. Mair:

That since the time we have been confined in the barracks of the first Constabulary company in Nueva Ecija we have not been maltreated by said soldiers in the barracks; that what I testified to before the honorable judge of this province, Mr. Isidro Paredes, and the fiscal, Mr. Villareal, is the truth, I having received no instructions from anybody; likewise, my statements to the Captain and the aforementioned fiscal in the Captain's house are the truth; and that the contents of the declaration drawn by Mr. Silvino de Guzman, attorney, are false, which said declarations drawn up by the aforesaid Silvino de Guzman was made by and for himself as up to the present time I do not know the said Silvino de Guzman, nor did I ever get to speak to him while in the prison of this province, and I state that the letter which he sent to the Governor-General of these Islands is not true; and in witness of all I sign hereafter.

JUAN GATMAITAN.

Subscribed and sworn to before me this 26th of July, 1912.

(Sgd.)

THOMAS I. MAIR,

Assistant Director, P. C.

I, Lucio Villa, First Sergeant of the First Constabulary Company of Nueva Ecija, state that I read the present document to Juan Gatmaitan, whom I asked if its contents were true, and he replied that same were correct.

(Sgd.)

LUCIO VILLA,

First Sergeant, P. I.

Subscribed and sworn to before me this 26th day of July, 1912.

(Sgd.)

THOMAS I. MAIR,

Assistant Director, P. C.

EXHIBIT "B."

THE UNITED STATES OF AMERICA,

*City of Manila, Philippine Islands, ss:**Sworn Statement.*

Thomas I. Mair, Assistant Director of the Insular Police, residing in Manila, P. I., after having been duly sworn, testifies and says:

That on the 26th of July, he went to San Isidor, Nueva Ecija,

for the purpose of continuing his investigations in regard to certain accusations of torture and maltreatment inflicted upon one Juan Gatmaitan, alleged to have been committed by certain members of the Insular Police when the aforesaid Juan Gatmaitan was under their custody.

That in the course of this investigation the deponent interviewed the aforementioned Juan Gatmaitan, who was at that time in the custody of the Insular Police at Cabanatuan, Nueva Ecija; that before asking the aforesaid Juan Gatmaitan any questions, the deponent explained to him,—through an interpreter,—that he was the Colonel and Director of the Insular Police of Nueva Ecija and that he was investigating certain accusations in regard to abuses or tortures alleged to have been inflicted upon him (Juan Gatmaitan) by the Constabulary that he requested Juan Gatmaitan to speak freely and without any fear; that if he (Juan Gatmaitan) so desired,

412 the deponent would withdraw him from the custody of the Constabulary at Cabanatuan; that the desire of the deponent in making this investigation was to inquire into the correctness of said accusations and, if the same proved true, to punish the officers or soldiers who were guilty of maltreating the person of the aforesaid Juan Gatmaitan in any manner whatever.

The deponent further states that, after the aforesaid Juan Gatmaitan had been informed of the purpose of his visit, he informed him that he had no complaint to make; that from the time of his detention he was well treated by the Constabulary and that if any petition had been made in his name alleging the contrary, it was made without his knowledge and authority.

The deponent further explained to the aforesaid Juan Gatmaitan that, although he had not made any investigation in regard to the murder of Eusebio Yuson, he was interested in knowing whether his testimony (that of Juan Gatmaitan) as a witness in the Court of First Instance at San Isidro, Nueva Ecija, in the case against Emilio Valdez, was given by him, the aforesaid Juan Gatmaitan, by reason of threats or fear; the aforesaid Juan Gatmaitan informed the deponent that he testified freely and without any fear and that he gave such evidence because it was true.

The deponent further says that, after this conversation with the aforesaid Juan Gatmaitan had taken place, he ordered that a
413 brief statement of the principal facts be written up, as shown by the attached Exhibit "A" and he ordered the contents of the same read to the aforementioned Juan Gatmaitan in detail so that he would understand the same; that thereafter the aforesaid Juan Gatmaitan had stated that he was fully informed as to the contents of the attached statement; wherefore, the deponent, by virtue of the power granted to him by section 3393 of the Compilation of the Laws of the Philippine Commission made the aforesaid Juan Gatmaitan take oath as to the truth of his statement and place his thumb-mark thereon in witness of the same.

This is all that the deponent has to say.

(Sgd.)

THOMAS I. MAIR,
Assistant Director, Philippines Constabulary.

Subscribed and sworn to before me in Manila, P. I., on August 5, 1912.

(Sgd.)

RAFAEL CRAME,
Assistant Director of the Insular Police.

EXHIBIT "C."

Affidavit.

I, E. W. Crockett, Captain of Constabulary and Senior Inspector of the same, in the Province of Nueva Ecija, — years of age, residing in San Isidro, Nueva Ecija, having taken oath as required by law, state:

That the detention of Juan Gatmaitan, Mateo Arcilla and Lucas Figueroa in the barracks of the Constabulary in Cabanatuan was by virtue of an order of the Justice of the Peace of San Isidro, Nueva Ecija, Philippine Islands. That during the time that said individuals were under the custody of the Constabulary they were always well treated and at no time were they molested, nor were they induced by promise of liberty or reward, nor by subjection to maltreatment, to admit, as they did admit, their participation in the death of Eusebio Yuson and to testify against Emilio Valdez; that at the various times that the deponent saw Gatmaitan, the latter did not make the least complaint and appeared to be satisfied with his treatment. That Juan Gatmaitan did not admit his participation in the death of Eusebio Yuson until he was taken to San Isidro and confronted by Mateo Arcilla and Lucas Figueroa; that when Juan Gatmaitan sent me word that he wished to make a statement before me; that the deponent, in order to avoid all suspicion in regard to the spontaneousness and truth of the statement and admission of

Juan Gatmaitan, requested that Mr. Felipe Buencamino, Jr., and the fiscal Villareal should take the statements of Juan Gatmaitan, Mateo Arcilla and Lucas Figueroa; that the deponent made no promise of liberty or reward, nor did he induce Juan Gatmaitan to testify against Emilio Valdez; that at all times when the deponent saw Juan Gatmaitan he gave him to understand that he desired to know nothing but the truth and nothing more; that the deponent obtained the permission of the provincial governor of Nueva Ecija to get Juan Gatmaitan from the provincial jail of San Isidro and keep him under his custody for the purpose of using him in the capture of caraboa thieves; that neither the deponent nor his subordinates have attempted to induce Juan Gatmaitan to make any statements adverse to his pretended retraction. That I have never promised P100 to Juan Gatmaitan.

In witness whereof I affix my signature to the present in Manila on August 1, 1912.

(Sgd.)

E. W. CROCKETT.

Subscribed and sworn to before me this 1st day of August, 1912, the deponent having exhibited his personal certificate of registra-

tion No. 1106885, issued in Manila on the 9th day of January, 1912.

(Sgd.)

C. A. IMPERIAL,
Assistant Attorney, Bureau of Justice.

Authorized under Sec. 36, Act 1407, to administer oaths.

EXHIBIT "D."

I, J. B. Steffee, single, 27 years of age, a native of Kissimmee, Florida, U. S. A., and lieutenant in the Constabulary, stationed in the municipality of Cabanatuan, Nueva Ecija, state and declare:

That during the time of the detention of Jaun Gatmaitan, Mateo Arcilla and Lucas Figueroa in the Constabulary barracks in Cabanatuan they received good treatment and I never permitted my soldiers to abuse them in any way, and that neither I nor my soldiers ever received any statement from Juan Gatmaitan during his detention up to the present time; that the statements made by Mateo Arcilla and Lucas Figueroa during the period of their detention were freely and spontaneously made, without promise or threats, and that I only offered personal protection to Lucas Figueroa to guard him against insults and vengeance of the partisans of the persons against whom he would make a statement.

In witness whereof I sign the present in triplicate in Cabanatuan this 1st day of August, 1912.

(Sgd.)

J. B. STEFFEE.

In the presence of:

A. E. VELARDE.

J. VERGARA.

Subscribed and sworn to before me in Cabanatuan this 1st day of August, 1912, deponent exhibiting to me his personal certificate of registration No. F-1435572, issued on January 22, 1912, at Lipa, Batangas.

[SEAL.]

ANTONIO JIMENEZ,
Justice of the Peace.

EXHIBIT "E."

Affidavit.

I, Felipe Buencamino, Jr., a practicing attorney in the Philippine Islands, of age and a resident of Cabiao, Nueva Ecija, under the oath required by law, state:

That I am and have been the attorney of Mrs. Perfecta de Guzman, widow of the deceased Eusebio Yuson, of Gapan, Nueva Ecija, and as such attorney of the said lady have intervened and taken part in the investigation made by the government in the case of United States vs. Emilio Valdez, Juan Gatmaitan and others, for

the murder of the aforesaid Eusebio Yuson. That during said investigation I examined many witnesses, among them Juan Gatmaitan, and that during said examination, which was conducted on the 28th day of May, 1912, in the office of the chief inspector of Constabulary of Neuva Ecija, said Juan Gatmaitan, after having been confronted with Mateo Arcilla and Lucas Figueroa, voluntarily confessed and admitted to the undersigned his participation, as well as that of Emilio Valdez, in the crime complained of. That by reason of said confession and admission so made by the aforesaid Gatmaitan, I personally drew up and wrote the affidavit already presented as evidence in said criminal case, and that thereafter it was ratified and freely sworn to by said Gatmaitan before the justice of the peace of the municipality of Gapan, N. E., at a public and open session of said court.

That the deponent at that time nor at any other time prior 418 to or after the aforesaid 28th of May, 1912, did not make use of any promise of liberty or reward, nor of any force, violence or intimidation on the person or will of the aforesaid Gatmaitan to induce him to make such confessions and admissions, but that on the contrary he then and on all occasions thereafter advised him to tell simply the truth and nothing else. The deponent also states that according to his best knowledge, information and belief the said Gatmaitan was never maltreated, nor induced by force, violence or intimidation, nor by any kind of promise by any officer or soldier of the Constabulary, to make such confessions and admissions. Furthermore, when said Gatmaitan made his first confession and admission before the deponent there was not present any officer or soldier of the Constabulary nor any other person besides the aforesaid Gatmaitan and the deponent.

That neither the deponent nor his client, Mrs. Perfecta de Guzman, according to his best information and belief, has offered P100, directly or indirectly, to the said Juan Gatmaitan, or to any other person, to induce said Gatmaitan or any other person to testify against the accused Emilio Valdez.

In witness of which I sign the present in Manila, P. I., this 1st of August, 1912.

(Sgd.)

FELIPE BUENCAMINO, Jr.

Subscribed and sworn to before me this 1st of August, 419 1912, deponent having exhibited to me his personal certificate of registration No. F-2800, issued in Manila on January 5, 1912.

[SEAL.]

(Sgd.)

C. A. IMPERIAL,

Assistant Attorney, Bureau of Justice.

Authorized under Sec. 36, Act 1407, to administer oaths.

420

EXHIBIT "F."

I, Lucio Villa, First Sergeant of Constabulary, of age, a resident of Cabanatuan, Nueva Ecija, Philippine Islands, solemnly state as follows:

1. That from the time of their arrival at our barracks the three prisoners, Juan Gatmaitan, Mateo Arcilla and Lucas Figueroa, have never been maltreated, and that I told my soldier companions in the said barracks that they should not maltreat the prisoners.

2. That at all times when lieutenant J. E. Steffee has talked to the prisoners and questioned them I have been the interpreter, and I never saw the said lieutenant get mad at them or maltreat them, and the questions have always been properly asked.

3. That everything testified to by the aforesaid prisoners before the aforesaid lieutenant is the same as testified to by them before the Honorable Judge Paredes and the Honorable fiscal Villareal, and they have not been instructed or compelled in any way, nor have they been threatened, and the statements made by them have been spontaneous.

That from the time the aforesaid prisoners arrived at our barracks our lieutenant has strictly cautioned us to treat said prisoners well, and any soldier not complying with said order would be punished.

In witness of which I sign the present in triplicate in Cabanatuan this 1st day of August, 1912.

(Sgd.)

LUCIO VILLA.

421

In the presence of:

A. E. VELARDE.

J. VERGARA.

Subscribed and sworn to before me in Cabanatuan this 1st day of August, 1912. Deponent exhibited to me his personal certificate of registration No. F-1109499, issued in Cuyapo, Nueva Ecija, on April 10th, 1912.

(Sgd.)

[SEAL.]

ANTONIO JIMENEZ,

Justice of the Peace.

422

EXHIBIT "G."

I, Geronimo Guevara, 2nd Sergeant of Constabulary, stationed in the municipality of Cabanatuan, Nueva Ecija, Philippine Islands, under oath, state as follows:

That the three prisoners called Juan Gatmaitan, Mateo Arcilla and Lucas Figueroa, from the time of their arrival at our barracks in Cabanatuan, by order of the commander of the company, J. E. Steffee, were placed in the jail in the barracks, and I never saw them maltreated by act or word by the lieutenant or any soldier, and the strict order of said lieutenant to the sergeants of the guard was that

none of the soldiers should talk with the prisoners excepting our sergeant Lucio Villa and our lieutenant J. E. Steffee.

In witness whereof I sign the present in triplicate in Cabanatuan this 1st of August, 1912.

(Sgd.)

GERONIMO GUEVARRA.

In the presence of:

A. E. VELARDE.

J. VERGARA.

Subscribed and sworn to before me in Cabanatuan this 1st day of August, 1912. Deponent exhibited to me his personal certificate of registration No. F-1109459, issued in Cuyapo, Nueva Ecija, on April 10, 1912.

[SEAL.]

ANTONIO JIMENEZ,

Justice of the Peace.

423

EXHIBIT "H."

I, Calixto Soleria, Corporal of the First Company of Constabulary of the Province of Nueva Ecija, Philippine Islands, under oath, state as follows:

That upon their arrival at our barracks the three prisoners called Juan Gatmaitan, Mateo Arcilla and Lucas Figueroa were placed in the jail in our barracks at Cabanatuan, Nueva Ecija, and our lieutenant, J. B. Steffee, gave us orders not to speak with the said prisoners and that only the two lieutenant-, J. B. Steffee and C. G. Dodd, and our first sergeant, Lucio Villa, could speak to the said three prisoners; that I have never seen the said lieutenants mistreat the prisoners, as well as my soldier companions, on all occasions when they spoke to them. I have seen nobody speak to them or treat them harshly. On the contrary, they were well treated.

In witness of which I sign the present in triplicate in Cabanatuan this 1st day of August, 1912.

(Sgd.)

CALIXTO SOLERIA.

In the presence of:

A. E. VELARDE.

J. VERGARA.

Subscribed and sworn to before me in Cabanatuan this 1st day of August, 1912. Deponent exhibited to me his personal certificate of registration No. F-1109460, issued in Cuyapo, Nueva Ecija, on April 10, 1912.

[SEAL.]

ANTONIO JIMENEZ,

Justice of the Peace.

424

EXHIBIT "J."

I, Lucas Figueroa, of age, a resident of Gapan, Nueva Ecija, Philippine Islands, having been first duly sworn, state: That on May 10, 1912, I was arrested by the Constabulary and taken to and detained at the Constabulary barracks in Cabanatuan, N. E., and after a number of days, same being less than a month, I was taken to the pueblo of San Isidro, N. E. That during the time of my detention I was not maltreated by act or word and I can state with assurance that my detained companions Mateo Arcilla and Juan Gatmaitan were not maltreated in the slightest way, but on the contrary, we were well looked after and fed, both by the chiefs and the soldiers. That everything that we stated and confessed before them was the whole truth and was freely stated without the use of force, violence or promise of reward, or cajolery on the part of anybody, but we freely and spontaneously asked that in view of our sincerity the Constabulary should protect our persons in order to avoid our being the subjects of vengeance. I at this time protest my sincerity and make the present statement freely and spontaneously without force or persuasion on the part of anyone, in order to set forth at all times and places my good faith.

In witness of all of which, and being unable to write, I affix my thumb print with my right hand.

Thumb
LUCAS FIGUEROA.
Print

425 Witness to thumb mark.

TEODORICO TANCHOCO.

Subscribed and sworn to before me July 31, 1912, at San Isidro N. E.

(Sgd.)
[SEAL.]

C. DE LA FUENTE,
*Justice of the Peace of the
Capital of Nueva Ecija.*

426

EXHIBIT "K."

Affidavit.

THE UNITED STATES OF AMERICA,
Philippine Islands,
Municipality of San Isidro, Nueva Ecija:

I, Mateo Arcilla, of age, married to Tarcila de Tiquia, a resident of the barrio of Santo Cristo, Gapan, Nueva Ecija, P. I., after having been duly sworn, freely and spontaneously state:

That during the time I was detained in the Constabulary barracks I received good treatment at all times, both from the officers and the soldiers, I having no complaints of any kind, nor any complaint

as to the food supplied to me during my confinement in the barracks.

That the statement made by me heretofore in the presence of the captain and his lieutenant here in San Isidro with respect to the murder of Eusebio Yuson, of Gapan, was made by me freely of my own will; that nobody induced, obligated or intimidated me to do so, and I did it all spontaneously.

I also set forth that the statement now made by me, as well as the former one, is made by me voluntarily and without intimidation of any kind.

In witness whereof I sign the present in San Isidro, Nueva Ecija, P. I., this 30th of July, 1912.

(Sgd.)

MATEO ARCILLA.

Signed in the presence of:

J. B. STEFFEE.

427 W. C. RAYNE.

Subscribed and sworn to before me this 30th of July, 1912, deponent having exhibited to me his personal certificate of registration No. 540,273, issued in Gapan on July 23, 1912.

(Sgd.)

E. J. RAMIREZ,

[SEAL.]

Notary Public.

My commission expires Dec. 31, 1912.

428 EXHIBIT "L."

THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of Nueva Ecija, 4th District.

Criminal Case No. 2009.

THE UNITED STATES
versus
EMILIO VALDEZ.

For Murder.

Affidavit.

I, Marcelo Villarosa, Warden of the Provincial Jail of Nueva Ecija, after being duly sworn according to law, freely and spontaneously set forth:

That I was present on the 17th of July, 1912, when the detained Juan Gatmaitan executed a document before the notary Mr. Salvador de Guzman.

That said document was brought to the prison already written and prepared; thereafter it was read to Juan Gatmaitan, who, upon being

asked whether he ratified its contents, replied that he did; and then the notary requested him to place his thumb mark with his right hand on the document; thereafter the witnesses who came with the notary signed; and everything having been finished the notary and his companions went away.

That the aforesaid Juan Gatmaitan, according to my best knowledge and belief, detained in the prison under my charge, never made any protest in regard to his detention.

429 In witness of the above I sign the present this 8th of August, 1912.

(Sgd.)

MARCELO VILLAROSA.

Subscribed and sworn to before me this 8th day of August, 1912, the deponent exhibiting to me his personal certificate of registration No. F-1115607, issued on February 12, 1912, in San Isidro, N. E.

(Sgd.)

ESTEBAN DEL ROSARIO,

[SEAL.]

Clerk of the Court of First

Instance of Nueva Ecija.

430

EXHIBIT "M."

THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of Nueva Ecija, 4th District.

Criminal Case No. 2009.

THE UNITED STATES

versus

EMILIO VALDEZ.

For Murder.

I, Troadio Cobarrubias, sergeant of the guard of the provincial jail of Nueva Ecija, after having been duly sworn as required by law, freely and spontaneously state:

1. That the Sheriff of Nueva Ecija delivered the detained Juan Gatmaitan to me when he was first brought to the provincial jail of Nueva Ecija for detention.

2. That according to my best knowledge the said Juan Gatmaitan on said occasion entered the door of the jail voluntarily, without any protest and without having to be compelled to do so by me or by any other guard or person in my presence.

In witness of the above I sign the present in San Isidro, Nueva Ecija, on August 8, 1912.

(Sgd.)

TROADIO COBARRUBIAS.

Subscribed and sworn to before me this 8th day of August, 1912,
deponent exhibiting to me his personal certificate of registra-
431 tion No. F-1115560, issued on January 23, 1912, at San
Isidro, N. E.

(Sgd.)

[SEAL.]

E. DEL ROSARIO,
*Clerk of the Court of First
Instance of Nueva Ecija.*

432

EXHIBIT "N."

THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of Nueva Ecija, 4th District.

Criminal Case No. 2009.

THE UNITED STATES
versus
EMILIO VALDEZ.

For Murder.

Affidavit.

I, Florence Alberto, corporal of the guard of the provincial jail of
Nueva Ecija, after having been duly sworn, freely and spontaneously
set forth:

1. That as corporal of the guard I received the detained Juan
Gatmaitan when he first entered the provincial jail of Nueva Ecija
to be detained as a prisoner.

2. That according to my best knowledge said Juan Gatmaitan on
that occasion entered the prison voluntarily, without any protest and
without being compelled to do so by me or any other guard or person.

In witness of the above I sign the present at San Isidro, Nueva
Ecija, on August 8, 1912.

(Sgd.)

FLORENCIO ALBERTO.

Subscribed and sworn to before me this 8th day of August, 1912,
deponent exhibiting to me his personal certificate of registra-
433 tion No. F-1115783, issued on March 1, 1912, at San Isidro,
Nueva Ecija.

(Sgd.)

[SEAL.]

E. DEL ROSARIO,
*Clerk of the Court of First
Instance of Nueva Ecija.*

434

EXHIBIT "O."

PROVINCE OF NUEVA ECIJA,

Town of San Isidro, ss:

Personally appeared before me the undersigned authority Mateo Arcilla who being duly sworn according to law deposes and says:

That he was confined in the Constabulary guard house at Cabanatuan at the same time Juan Gatmaitan was confined there.

That this confinement lasted from June 27th to July 4th and July 12th to 16th, 1912, inclusive.

That to his knowledge Juan Gatmaitan was not mistreated in any way, that deponent and Juan Gatmaitan received good treatment.

That he would have known had Juan Gatmaitan been tortured or mistreated in any way. That neither deponent nor Juan Gatmaitan received any promises of reward, or threats while under Constabulary guard.

(Sgd.)

MATEO ARCILLA.

No. 540273, July 23, 1912. Gapan.

Sworn to and subscribed before me this 9th day of August, 1912, in S. Isidro, N. E.

C. DE LA FUENTE,
Justice of the Peace.

435 UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of the Province of Nueva Ecija, 4th Judicial District.

Criminal case No. 2079.

THE UNITED STATES, Plaintiff,

v.

EMILIO VALDEZ and FRANCISCO AMANTE, Defendants.

Assassination.

SAN ISIDRO, NUEVA ECIJA, August 10, 1912.

The above entitled case has been called on the morning of this 10th day of August, 1912, before the Hon. Ysidro Paredes, Judge, by virtue of a motion presented by the defense asking for the

436 reopening of the case, there being personally present Messrs. Antonio Villa Real, assistant attorney in the office of the Attorney-General, in representation of the United States, and Felipe Buencamino Jr. as private prosecutor; and attorneys Inocencio Payumo, Pedro Carmen, and Aurelio Cecilio as counsel for the defense.

The Court: It is hereby made of record that as the prosecuting attorney states he has not received copies of the affidavits which should accompany the motion for a new trial, presented by the accused (Valdez), the court orders that copies of said affidavits be furnished the prosecuting attorney at once by the defense. It is also hereby made of record that, as the answer of the prosecuting attorney to the motion for a new trial is accompanied by 13 or 14 affidavits, the contents of which have thus just been learned by counsel for the accused, said court grants to said counsel one-half an hour to inform themselves of the answer and of the contents of the affidavits before the court will hear the arguments of both parties. (At the expiration of the appointed time granted to the defense the hearing was continued.)

The Court: Now the defense may argue regarding its motion. (The parties at once argued regarding the motion in question.)

The Court: Let it be made of record that after the counsel for the defense have made their arguments in support of the motion, and after the prosecuting attorney has replied with his argument, said counsel for the defense presented new affidavits, or sworn declarations, marked Exhibit 1 of Dionisio de los Reyes, 2 of Vicente Padua, 3 of Marcelino Mactal, 4 of Mamerto Aquino, 5 of Silvino de Guzman, 6 de (of) Pedro Carmen, 7 of Florencio Miranda, 8 of Hermenegilda Balmonte, 9 of Mariano Ginco, 10 of Salvador de Guzman, and 11 of Isabelo Tolentino, copies of which exhibits have been served on the prosecuting attorney at the time of the hearing.

(The prosecuting attorney objected to the admission of said affidavits, alleging that they do not constitute newly discovered evidence inasmuch as the defense already knew the information contained therein before the hearing of this case, and that they are immaterial.

The court ordered that all the affidavits presented be attached to the record, and reserved its decision in regard to the request for a new trial, and then declared closed the session of the court.

I hereby certify that the preceding is a correct and true transcription of the stenographic notes taken by me during the hearing of the motion presented in this case at the time and place mentioned.

(Sgd.)

SANTIAGO GUISANDE,

Official Stenographer.

Filed this 21st day of October, 1912.

Clerk of Court.

438

DEFENDANTS' EXHIBIT 1.

I, Dionisia de los Reyes, widow, over 30 years of age, of the barrio of San Lorenzo, within the limits of the municipality of Gapan, of this Province of Nueva Ecija, truthfully state that on the 17th day of March of this year, before afternoon prayers, I went to the house of Manerto Aquino, my nearby neighbor, and after prayers Vicente

Padua arrived and caught his hen; in said house of Mamerto Aquino on the same afternoon I met Juan Gatmaitan, and I also saw that he had supper in said house on that night; I also remember to have seen Juan Gatmaitan watching our game of monte, one centante, and in said house we heard rumors to the effect that the cabezang Sebio Yuson had been assaulted, and when Juan Gatmaitan left I saw that he went with Vicente Padua.

We gambled that night in the house of Mamerto Aquino, Monico Mactal being the banker and Rufina Yuson, Filmomena Figueroa, Mariano Ginco and others whose names I do not remember, were the players.

This is what really happened, as I remember it, and being unable to write, I affix my thumb mark with my right hand, in San Isidro, Nueva Ecija, this 5th day of August, 1912.

DIONISIA DE LOS REYES. [Thumb Mark.]

Deponent exempt from personal certificate of registration by reason of her sex.

439 Subscribed and sworn to before me this 5th day of August, 1912.

[SEAL.]

INOCENCIO PAYUMO,

Notary Public.

My commission expires December 31, 1912.

440

DEFENDANTS' EXHIBIT 2.

I, Vicente Padua, married, 50 years of age, of the barrio of San Lorenzo, municipality of Gapan, of this province of Nueva Ecija, truly state that on the 17th day of March last, a Sunday, after the afternoon prayers, I caught my hen in the house of Mamerto Aquino, my next door neighbor, and I met there Juan Gatmaitan and Dionisia de los Reyes, Monico Mactal, Rufina Yuson, Filomena Figueroa, Mariano Ginco and others whose names I do not remember, and I saw them playing monte with one centante and I saw Juan Gatmaitan watching the monte game until after the passing of the train going to Peñaranda that night, and I also saw that Juan Gatmaitan had supper in that house on the said night, and while we were in the house of Mamerto Aquino on that same night we heard people in the street saying that the cabezang Sebio Yuson had been assaulted, and when I left said house Juan Gatmaitan came with me and the two of us went to my house and Juan Gatmaitan secured a piece of a plow that he had asked me for and after same had been delivered to him he left.

This is what actually occurred, as I remember, and in witness thereof I sign the present in San Isidro, Nueva Ecija, this 5th day of August, 1912.

(Sgd.)

VICENTE PADUA.

Personal certificate of registration G-483991, May 4, 1912, Gapan, Nueva Ecija.

441 Signed and sworn to before me this 5th of August, 1912.
[SEAL.] INOCENCIO PAYUMO,
Notary Public.

My commission expires Dec. 31, 1912.

442 DEFENDANTS' EXHIBIT 3.

I, Marcelina Mactal, single, 45 years of age, of the barrio of San Lorenzo, within the limits of the pueblo of Gapan, of this province of Nueva Ecija, truly state: That on the afternoon of the 17th of March last I was in our house and before sundown Juan Gatmaitan arrived; thereafter there arrived Mamerto Aquino, and Juan Gatmaitan also met in the said house Rufina Yuson, Filomena Figueroa, Mariano Ginco and Vincente Padua, and others whose names I do not remember.

The aforesaid house belongs to Mamerto Aquino and Juan Gatmaitan was still watching the game therein on the said night, and a rumor reached us there from the people in the street to the effect that the cabezang Sebio Yuson had been assaulted, and when Juan Gatmaitan left he went in company with Vicente Padua, and he also had supper there, and after that went away with Vicente Padua.

When Juan Gatmaitan was arrested by the secret police he was brought to our house and he asked us to testify that he was with us in our house on the night when the cabezang Sebio Yuson was murdered, because they charged him with having been the author of the death of cabezang Sebio; this request of his was also heard by the one who had arrested him, who replied that Juan Gatmaitan would soon return and that they wanted nothing more of him except to take his statement.

443 That is what actually happened, as I remember, and not being able to write I affix my right thumb mark, in San Isidro, Nueva Ecija, this 6th day of August, 1912.

MARCELINA MACTAL. Thumb
Mark.

Marked and sworn to before me this 6th day of August, 1912.
Deponent exempt from cedula by reason of sex.

[SEAL.] INOCENCIO PAYUMO,
Notary Public.

My commission expires December 31, 1912.

444 DEFENDANT'S EXHIBIT 4.

I, Mamerto Aquino, widower, 58 years of age, of the barrio of San Lorenzo, within the limits of the Town of Gapan, of this province of Neuva Ecija, truly state: That on the 17th of March of this year, when I arrived at our house in the afternoon of that day I met there Juan Gatmaitan, and he was watching a gambling game in our

house on that night and had supper there, and a rumor came to us there from the people in the street to the effect that the cabezang Sebio Yuson had been assaulted, and when he, Gatmaitan, went away, he left in company with Vicente Padua.

The ones who played monte in our house on that night were Monico Mactal, the banker, and Rufina Yuson, Filomena Figueroa, Mariano Ginco, Dionisia de los Reyes and others whose names I do not remember.

Juan Gatmaitan is my tenant, for which reason he was, after his arrest by the secret service police, brought to our house and charged us to testify in his behalf that he was in our house on the night on which the cabezang Sebio Yuson was murdered, and this request of his was heard by the person who had arrested him and who answered saying that Juan Gatmaitan would soon return and that they wanted to take his statement and would do nothing to him.

This is what actually occurred, as I remember, and in witness thereof I sign the present at San Isidro, Nueva Ecija, this 5th of August, 1912.

(Sgd.)

MAMERTO AQUINO.

445 Personal certificate of registration No. F-1123401 issued April 20, 1912, Gapan, Nueva Ecija.

Signed and sworn to before me this 6th day of August, 1912.

[SEAL.]

INOCENCIO PAYUMO,

Notary Public.

My commission expires December 31, 1912.

446

DEFENDANT'S EXHIBIT 5.

I, Silvino de Guzman, single, 24 years of age, and a resident of San Isidro, Nueva Ecija, declare under oath: That on the afternoon of the 16th of July of the present year I was appointed by the court of first instance of this province attorney de officio for the accused Juan Gatmaitan, who, at the conference which I had with him on the morning of the following day, the 17th, among other things, freely and spontaneously, without my making him any promise or using force on his person, and in the presence of some provincial guards, confessed to me for the first time all that appears in his sworn statement of the 17th of July, 1912, executed before the notary public Salvador de Guzman, and he also told me that everything he had told me was the truth, even though they hanged him therefor.

In witness of which I sign the present in San Isidro, Nueva Ecija, this 9th of August, 1912. .

(Sgd.)

SILVINO DE GUZMAN.

Personal certificate of registration No. F-1115513, January 5, 1912. S. Isidro, N. E.

Signed and sworn to before me this 9th of August, 1912.

[SEAL.]

INOCENCIO PYUMO,

Notary Public.

My commission expires December 31, 1912.

447

DEFENDANT'S EXHIBIT 6.

I, Pedro Carmen, married, 39 years of age, and a resident of San Isidro, Nueva Ecija, declare under oath: That on the afternoon on which Juan Gatmaitan made his sworn statement before the notary public Salvador Guzman I was there present.

That during the time the notary read his statement to him and at the time he affixed his thumb mark to the same I noticed an absolute spontaneousness and a firmness and straightforwardness on the part of the said Gatmaitan.

That during the time mentioned I neither heard nor saw any threats, impositions and suggestions from any person.

In witness of which I sign the present in San Isidro, Nueva Ecija, this 9th of August, 1912.

(Sgd.)

PEDRO CARMEN.

Personal certificate of registration No. F-1115808, March 5, 1912, S. Isidro, N. E.

Signed and sworn to before me this 9th of August, 1912.

[SEAL.]

INOCENCIO PAYUMO,

Notary Public.

My commision expires December 31, 1912.

448

DEFENDANT'S EXHIBIT 7.

I, Florencio Miranda, of age, married and a resident of San Isidro, Nueva Ecija, declare under oath: That on the afternoon of the 17th of July, 1912, and in the provincial jail of San Isidro, Nueva Ecija, I was present at the time when Juan Gatmaitan signed and swore to his statement before the notary public Salvador de Guzman, I signing as a witness, and before affixing my signature I asked the aforesaid Juan Gatmaitan if that statement was his, to which he replied in the affirmative, and also whether anybody had forced him or intimidated him or promised him anything before he made that statement, and he replied that nobody had done so, and that everything stated by him was the truth.

In witness whereof I sign the present at San Isidro, Nueva Ecija, this 9th of August, 1912.

(Sgd.)

FLORENCIO MIRANDA.

Personal certificate of registration No. F-1116957, April 27, 1912. S. Isidro, N. Ecija.

Signed and sworn to before me this 9th day of August, 1912.

[SEAL.]

INOCENCIO PAYUMO,

Notary Public.

My commission expires December 31, 1912.

449

DEFENDANT'S EXHIBIT 8.

I, Hermenegilda Valmonte, married, 40 years of age, of the barrio of San Vicente, within the limits of the town of Gapan, of this province of Nueva Ecija, declare the truth as follows: That on the 17th of last March, after the afternoon prayers, I went to the house of Mamerto Aquino and met there Juan Gatmaitan, seated at the side of the cabecilla Monico Mactal, and I also saw that he had supper that night in that house, and the rumor reached us there to the effect that the cabezang Sebio Yuson had been assaulted, and when I went away he was still in that house.

It was Sunday night when I saw Juan Gatmaitan in the house of Mamerto Aquino, as stated by me above.

This is what happened, as I remember, and being unable to write place my right thumb mark upon this paper at San Isidro, Nueva Ecija, this 10th of August, 1912.

Thumb

HERMENEGILDA VALMONTE.

Mark.

Signed and sworn to before me this 10th day of August, 1912.
[SEAL.] INOCENCIO P-YUMO,

Notary Public.

My commission expires Dec. 31, 1912.

450

DEFENDANT'S EXHIBIT 9.

I, Mariano Ginco, married, 21 years of age, of the barrio of San Lorenzo, within the limits of the town of Gapan, of this Province of Nueva Ecija, truly state: That on the 17th of March, Sunday night, I saw Juan Gatmaitan in the house of Mamerto Aquino, seated at the side of Monico Mactal, while we were playing monte with one centante, he had supper at said house that night, and the rumor reached us there that the cabezang Sebio Yuson had been assaulted, and I also saw that Juan Gatmaitan had supper in that house on that night.

That is what occurred, as I remember, and in witness thereof I sign the present at San Isidro, Nueva Ecija, this 10th of August, 1912.

(Sgd.)

MARIANO GINCO.

Personal certificate of registration No. F-11123014, April 10, 1912. Gapan, Nueva Ecija.

Signed and sworn to before me this 10th day of August, 1912.
[SEAL.] INOCENCIO PAYUMO,

Notary Public.

My commission expires on December 31, 1912.

451

DEFENDANT'S EXHIBIT 10.

I, Salvador de Guzman, single, 30 years of age, and a resident of San Isidro, Nueva Ecija, state under oath:

That on the afternoon of the 17th day of July, 1912, and in the provincial jail of San Isidro, Nueva Ecija, Juan Gatmaitan made acknowledgment before me under oath, freely and spontaneously and without hesitation of any kind.

That by an oversight the oath of the said Juan Gatmaitan was not set forth in said ratification, although he actually took it, as appears in the heading of the same.

In witness of which I sign the present at San Isidro, Nueva Ecija, this 10th day of August, 1912.

(Sgd.)

SALVADOR DE GUZMAN.

Personal certificate of registration No. F-1115777, February 29, 1912. S. Isidro, Nueva Ecija.

Signed and sworn to before me this 10th day of August, 1912.
[SEAL.]

INOCENCIO PAYUMO,

Notary Public.

My commission expires December 31, 1912.

452

DEFENDANT'S EXHIBIT 11.

I, Isabelo Tolentino, one of the provincial guards of Nueva Ecija, under oath, freely and spontaneously set forth:

That on the morning of the 17th day of July, 1912, I was one of the provincial guards who accompanied Mr. Silvino de Guzman on his visit to Juan Gatmaitan in the provincial jail of Nueva Ecija; I was present when they spoke to each other and remember the conversation they had, and, among other things, the following:

1. Mr. Silvino de Guzman asked Gatmaitan who his witnesses were, and the latter replied that his landlord, his family and his aunt were such.

2. He further said that what he had declared before the judge of first instance was not the truth, because, according to him, he did not know who killed the lieutenant Eusebio Yuson and that he (Juan Gatmaitan) was then in the house of his landlord.

3. The other things they spoke about I do not remember.

In witness of all which I have executed and signed the present document at San Isidro, Nueva Ecija, this 9th day of August, 1912.

(Sgd.)

ISABELO TOLENTINO.

Sworn to before me this 10th of August, 1912.

INOCENCIO PAYUMO,

Notary Public.

My commission expires December 31, 1912.

453 THE UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of the Province of Nueva Ecija, Fourth
Judicial District.

Criminal No. 2079.

THE UNITED STATES, Plaintiff,
versus
EMILIO VALDEZ et al., Defendants.

Murder.

Order Denying the Motion for a Rehearing.

The defendant Emilio Valdez prays for a rehearing of his case, claiming the discovery after judgment had been rendered of certain new evidence consisting in the so-called retraction of the witness Juan Gatmaitan, made in the provincial jail before a notary public and other persons, on the morning of the 17th of July last. In support of the petition there have been presented various affidavits during the hearing in addition to those that are attached to said petition. At the aforesaid hearing the attorney for the government opposed the petition of Valdez, and in support of said opposition also presented several affidavits.

In order to resolve this matter the court will take into consideration all the affidavits submitted, especially that of Gatmai-
454 tan, in the same manner as though the deponents had appeared to testify on a reopening of the case and had therein testified to the exact facts set out in their respective affidavits. The matter being treated in this way, if the court finds that the retraction of Gatmaitan could be greatly influential in securing the absolution of Emilio Valdez, he believes that, in the interest of said accused, as well as in the interest of justice, the rehearing should be granted.

In the retraction it is said that Gatmaitan is completely ignorant of the fact of the murder of Eusebio Yuson and the circumstances thereof, and that during the trial of the case said Gatmaitan did not testify truthfully. Gatmaitan can, of course, voluntarily or by inducement, retract as many times as he desires the statement made by him during the trial; but it is a somewhat difficult undertaking to make the court believe that the contents of that statement are not correct and that Gatmaitan was in reality ignorant as to the facts surrounding the death of Eusebio Yuson. The truth cannot be obliterated by a perjury. The evidence given by Gatmaitan during the trial is in complete conformity with the statements of Arcilla, Figueroa, Diego and others; the same has been corroborated by material and physical proofs, certain occurrences at the place of the crime, certain unequivocal indications that the acts to which Gat-

maitan referred in his evidence had been committed there. Before the trial he had already made a sworn statement in the presence of the Justice of the Peace of Gapan, substantially the same
455 as his evidence at the trial. Before making said sworn statement in the presence of the justice of the peace, he had already made another similar one before Mr. Buencamino, who then took notes of said statement. Before Gatmaitan had the conference with Mr. Buencamino, the former was confronted by Arcilla and Figueroa, and after the confrontation spontaneously confessed that he and Valdez had participated in the murder of Yuson. Long time after the trial, and in the presence of Colonel Mair, who was conducting an official investigation in Cabanatuan for the very purpose of discovering whether the allegations contained in the retraction were correct, Gatmaitan also confessed that the evidence given by him at the trial was the whole truth. To Mr. Villareal, the fiscal in this case, before the filing of the complaint, Gatmaitan also confessed the facts that he testified about on the trial. Even if Gatmaitan should appear at a rehearing of this case for the purpose of giving evidence in regard to his innocence and that of Valdez, morally and legally the court would be unable to believe him, unless the other witness for the prosecution also appeared to make retractions, which is impossible for the very reason that the court has before him the affidavits of Arcilla and Figueroa, affirming their evidence given at the trial and stating that the same is true and was spontaneous. In every manner and in different forms, under oath and without, before competent authorities and before private ones, at various places and on different occasions, Gatmaitan has maintained
456 and made people believe the truth of his evidence at the trial; and now logic and common sense preclude him from stating the contrary, and if he so states by means of perjury, all credit is denied him.

In the retraction it is also stated that the statement of Gatmaitan in the Court of First Instance was gotten up by the Constabulary, who, for the purpose of persuading him, subjected his person and mind to ill treatment, threats, assurances of protection and liberty and promises of monetary reward. This part of the retraction is not only false but highly slanderous. It is denied by all the counter-affidavits here presented and is energetically contradicted by the oath of Colonel Mair taken after having officially investigated these alleged illegalities. But even putting aside all of these counter-affidavits, the court refuses to believe that either the Constabulary or attorney Buencamino, without any known or proved motive or interest, committed against Gatmaitan the enormities which he attributes to them. Apart from this, in order to believe such accusations of Gatmaitan, it would be necessary to prove that Arcilla, Figueroa and all the other government witnesses in the case against Valdez were instructed by the Constabulary or by Buencamino, since the statements made by all of them at the trial perfectly corroborated each other. Furthermore, how can this be expected or suspected, considering that Arcilla and Figueroa, among other deponents, state that their statements were free and spontaneous? The ill treatment

which the retraction says was inflicted on the person of Gatmaitan consisted in not allowing him to sleep during a period of
457 three weeks, the soldiers, one by one, whenever he attempted to sleep, preventing him from sleeping. What Gatmaitan has apparently been coached to state is the description of such a refined class of torture that if he had actually been submitted thereto, for a period of two weeks, he would not have survived.

The retraction of Gatmaitan says that the reason for his not having states the truth in the Court of First Instance was his fear of the Constabulary, in whose power he then was. Such an explanation is very easy to make but very hard to believe. When Gatmaitan testified at the trial Valdez's attorneys instructed him as to his rights and emphatically and repeatedly gave him to understand that no fiscal, clerk, jailer, constable, officer or soldier had any power to make him testify against his will; but Gatmaitan, well informed as to his rights, resolutely and without hesitation testified against himself and Valdez. And indeed it cannot be understood how a man could be afraid of the Constabulary who at the time of testifying was protected by all the power and authority of a court of justice, who had in his favor all present public guarantees, and, in addition, the effective aid which, if required, the same attorneys for the defense who had instructed him could give him to enforce his right of not being called upon to testify to anything that was not true.

The affidavits here present demonstrate that Gatmaitan
458 should have not been afraid of the Constabulary. Colonel

Mair told him that if he desired to be taken from the custody of the Constabulary of this province it could be done, but Gatmaitan told him that he had no complaint to make and that from the time of his detention he had been treated with every consideration by the Constabulary. During the trial he made absolutely no complaint against the Constabulary. In his testimony he stated that he was afraid of Valdez on account of the latter having threatened him with death. The affidavit of Figueroa, referring to himself, Gatmaitan and Arcilla says: "We ask that in return for our sincerity the Constabulary will protect our persons so as to prevent our becoming the subjects of vengeance." On May 29th the Justice of the Peace of the Capital, sitting as a court of first instance, placed under the custody of Captain Crockett, on petition of the same, the individuals Gatmaitan, Arcilla and Figueroa, without the latter at that time or up to this time making any complaint with regard to said proceeding. In view of the foregoing facts and circumstances, I do not think that any sensible person would take any stock in the fear to which the retraction of Gatmaitan refers.

In said retraction of Gatmaitan it is said that the reason for making it was that he became aware of the sentence of death imposed on Valdez, and it says: "My conscience will not permit that Emilio Valdez should be condemned by reason of my statement, since he is not really guilty." Gatmaitan already knew this when during the
459 course of his evidence in the trial the attorneys for the defense appealed to his conscience, giving him to understand in a loud and condemnatory tone that his testimony would

result in sending an individual to the gallows. But the conscience of Gatmaitan then was serene and the remorse which he now attempts to show in his retraction would seem to be rather tardy and hypocritical, since his retraction gives as another reason: * * * "and for the further reason that neither Captain Crockett nor Buenamano have fulfilled their promises to me." If it was correct that said persons had offered money to Gatmaitan, the last words of the latter reveal great cynicism and moral perversion; but if said promise was not made, and the court believes it was never made, then the words of Gatmaitan signify malice and untold depravity.

From everything heretofore set forth, it is seen that the retraction of Gatmaitan, granting that it was really made by him, and supposing also that it had been reproduced and ratified at a rehearing of the case, can in no way influence the absolution of Valdez, since said retraction is entirely false in all its parts, and by reason of being false it has no probative value, and, lacking probative value, it cannot change the merits of the case nor alter the conclusions drawn by the trial court in its sentence. And taking for granted for a moment that the aforementioned retraction was not really made by Gatmaitan, inasmuch as the latter in his counter-affidavit denies having made it and says that he did not speak with attorney Guzman in the provincial jail, it will at once appear that the granting of the petition for a rehearing would be improper.

In order that the denial of Gatmaitan may be well understood, it should be noted that in his counter-affidavit he does not deny the fact of the document or affidavit of retraction there having been read to him, and neither does he deny having placed his thumb mark on the same. The thing that Gatmaitan denies is having had a conference in the provincial jail with attorney De Guzman prior to signing and swearing to the retraction; the denial of Gatmaitan consists in the claim that he did not speak with attorney Guzman nor did he say these or similar words to him: "I am aware of the sentence of death imposed on Valdez; my testimony at the trial was false, my conscience rebukes me for having testified falsely against an innocent person and that the innocent person by reason thereof will go to the gallows." None of the deponents in the affidavits presented by the defense state that they saw attorney Guzman have a conference with and speak with Gatmaitan; none of them declared to have heard Gatmaitan state to the attorney the words heretofore underlined by the court. The only thing that these deponents knew and stated is that they were present at the time the affidavit was read to Gatmaitan and he affixed his thumb mark to the document. It is true that in the affidavit of attorney Guzman it is said that he had a conference with Gatmaitan, and that during that conference Gatmaitan made the retraction in the words appearing in the affidavit; but we have already said that this is flatly denied by Juan Gatmaitan. On the other hand, it is said in the affidavit of the jailer that the document of retraction, already prepared and written out, was brought to the provincial jail by attorney Guzman. So it would seem that the preparation of said document did not take place in the provincial jail as stated in the heading thereof, but undoubtedly out-

side of said jail. It is true that Mr. Silvino Guzman was appointed by the undersigned to act as attorney de officio to assist Gatmaitan at his appearance and the reading of the complaint charging the murder of Yuson; but that occurrence took place on the afternoon of the 16th of July and the trial of the case was set for the first day of the regular session of this court. Further, Mr. Guzman, under the pretext of being the attorney of Gatmaitan, obtained the permission of the provincial governor to go to the jail and confer with his client. Carefully reading the retraction which the attorney obtained from Gatmaitan, it is immediately seen from the language and content thereof what points were discussed at the conference between them. Gatmaitan is a rude and ignorant man and was not present when the judgment of conviction was read to Valdez, notwithstanding, it is a strange thing to see these points mentioned in the aforesaid affidavit of retraction. It is certain that nobody heard Gatmaitan make the retraction before attorney Guzman; and that the affidavit of retraction was written and prepared outside of the jail. It is also certain that the contents of that affidavit were read to Gatmaitan before

462 he signed the same, but, dealing with an ignorant person, forsaken prisoner who had just been talking with his attorney, who afterwards returned with a notary public and other witnesses for the purpose of getting him to sign a document, it is easily understood that he would at the time sign the same with entire conformity and spontaneousness, as stated by the witnesses there present. The court, in conclusion, believes that the document of retraction obtained from Gatmaitan by attorney Guzman under the conditions and circumstances which have just been mentioned, is of doubtful, if not suspicious, spontaneousness, and, therefore, cannot serve as the basis for a rehearing in the case. And furthermore, if Gatmaitan made such a retraction at the rehearing and it were admitted in spite of the doubts and suspicions which it arouses, it should also be taken into account that at this same rehearing there would be introduced by the prosecution the counter-affidavit or counter-retraction of Gatmaitan, in which event said rehearing would result in complete failure.

There is an affidavit to the effect that the Constabulary again took charge of Gatmaitan after he made his retraction, and that, according to information, the Constabulary is trying to induce him to withdraw his retraction, for which reason the court is asked to again order the reclusion of Gatmaitan in the provincial jail. But there are also affidavits contrary thereto, explaining that the Constabulary, with the permission of the provincial governor, is keeping Gatmaitan in its custody to render them services in the search for an
463 capture of carabao thieves. The court, on July 16th, ordered the reclusion of Gatmaitan in the provincial jail, without said order having been revoked up to this time. If anybody ordered the release of Gatmaitan from said jail, it appears more reasonable that the defense of Valdez should address its petition to the provincial governor, and if the latter should deny it without just ground, then the court will be able to grant any remedies that may be proper. But in view of the conclusions at which the court has arrived in the resolution

tion of the motion for a rehearing, it is not now necessary to resolve anything with regard to the new detention of Gatmaitan in the provincial jail.

In the motion of Valdez it is said that Gatmaitan resisted being locked up and that when the guards compelled him to enter the jail he addressed himself to the corporal of police and said the following words: "Tell the captain that this is not what we agreed upon." Notwithstanding, this motion of Valdez has not been sworn to, and furthermore there are two counter-affidavits to the effect that Gatmaitan entered the jail without any resistance. Before terminating this resolution, it is appropriate to say that the retraction of Gatmaitan was not sworn to before the notary public Salvador de Guzman.

The motion for a rehearing is denied and it is ordered that the appeal take its course.

So ordered.

464 Given in San Isidro, Nueva Ecija, this 12th of August, 1912.

(Sgd.)

ISIDRO PAREDES,
Acting Judge, 4th Judicial District.

465 UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of Nueva Ecija.

Criminal. No. 2079.

THE UNITED STATES, Plaintiff,
versus
EMILIO VALDEZ, Defendant.

Emilio Valdez, through his undersigned attorneys, states:

That he has been notified of the order overruling the motion for a rehearing, and, protesting, respectfully, against the conclusions there established in support of the resolution.

He excepts to the same and asks that this exception be made of record.

He reproduces the appeal which he has heretofore interposed and asks that the case be forwarded, as soon as possible, to the Supreme Court.

August 16, 1912.

(Sgd.)

SINGSON, LEDESMA Y LIM,
CHICOTE Y MIRANDA,
Attorneys for the Accused.

Filed this 19th day of August, 1912.

E. DEL ROSARIO,
Clerk of Court.

466 The case was duly received in the Supreme Court of the Philippine Islands on August 22, 1912, and docketed under R. G. No. 8185.

On September 13, 1913, the appellant Emilio Valdez duly filed his brief in the Supreme Court.

On September 29, 1913, the appellant Emilio Valdez filed a motion for a new trial, as follows:

467 Filed Sept. 29, 1913. V. A.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. 8185.

THE UNITED STATES, Querellante,
vs.
EMILIO VALDEZ y FRANCISCO AMANTE, Querellados.

Asesinato.

Motion for New Trial.

Now comes the defendant and appellant Emilio Valdes, in the above entitled cause, by his attorneys Southworth & Hargis, and moves the Court to set aside the judgment of conviction rendered against him by the Court below, and grant said defendant and appellant a new trial, and for reasons assigns the following:

1. Because the judgment of conviction in the Court below is contrary to the law.

2. Because the judgment of conviction in the Court below is manifestly contrary to the weight of evidence.

3. Because the Court below erred in taking a view of the place where the alleged offense is said to have been committed, and in taking evidence at said place in the absence of the defendant and appellant in violation of Section 15, General Orders 58, and Section 5 of the Act of Congress of July 1st, 1902, commonly known as "The Philippine Bill," and in violation of Article 6 of the amendment to the Constitution of the United States. In support

468 of this ground of this motion are submitted the affidavits of Florencio Miranda, marked Exhibit "A"; Cenon Monasterial marked Exhibit "B"; Jose Moreno, marked Exhibit "C"; Julio Va Monte, marked Exhibit "D"; L. M. Southworth, marked Exhibit "E"; and Manuel Goyena, marked Exhibit "F"; all of which affidavits are attached to and made a part of this motion.

Manila, P. I., September 27th, 1913.

(Sgd.)

SOUTHWORTH & HARGIS,
Attorneys for Defendant and Appellant
Emilio Valdez, for the Motion.

50 Escolta, Manila, P. I.

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EXHIBIT "A."

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

G. R. No. 8185.

THE UNITED STATES, Plaintiff,

versus,

EMILIO VALDEZ and FRANCISCO AMANTE, Defendants.

Murder.

UNITED STATES OF AMERICA,

*Philippine Islands,**Municipality of San Isidro,**Province of Nueva Ecija, ss:*

I, Florencio Miranda, having been duly sworn state:

That I was in the house of the deceased Eusebio Yuson, in the Municipality of Gapan, Province of Nueva Ecija, on the 12th day of July, 1912, when Judge Paredes of the Court of First Instance, then presiding at the trial of the case against Emilio Valdez, accused of having murdered Eusebio Yuson, visited Gapan for the purpose of making a personal inspection of the place where it is alleged Eusebio Yuson was murdered. I saw Judge Paredes examine the stairway of the house of the deceased Eusebio Yuson, on which it is alleged he was murdered, and I saw and heard Captain Crockett of the Constabulary point out to the aforesaid Judge the 470 places in the aforesaid stairway and in the house where it was claimed the small shot fired by the murderer had penetrated, and he showed said Judge the place which had been pointed out to him (Captain Crockett) by Gatmaitan as the place where the latter stood when he fired the shot which caused the death of the said Yuson. I also saw Perfecta de Guzman, the widow of the deceased, showing the aforesaid Judge the manner in which her deceased husband fell on the stairway after he had been shot, she lying down on the stairway, for that purpose, and she also told the aforesaid Judge certain facts which happened at the time of the murder. During the greater part of this interview Perfecta de Guzman was weeping violently, the tears streaming from her eyes. I also saw Captain Crockett walking on the streets of the municipality of Gapan pointing out to the aforesaid Judge certain streets and houses connected with the case. The said Judge, in company with Captain Crockett and the attorneys of both parties in the case, and other persons, examined the house of the nephew of the deceased, and its environs, situated near the scene of the murder. I saw the Judge, together with other persons, examine the house of the accused Emilio Valdez, and its environs. During all the occurrences above stated the accused Valdez was absent.

(Sgd.)

FLORENCIO MIRANDA.

Subscribed and sworn to before me, the 28th of September,
 471 1913, deponent exhibiting his personal certificate of registra-
 tion No. F-1323721 issued at San Isidro, Nueva Ecija, Jan-
 uary 25, 1913.

[SEAL.]

(Sgd.)

PERFECTO MENDOZA,

Notary Public.

My commission expires December 31, 1914.

472

EXHIBIT "B."

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

G. R. No. 8185.

THE UNITED STATES, Plaintiff,

versus

EMILIO VALDEZ and FRANCISCO AMANTE, Defendants.

Murder.

UNITED STATES OF AMERICA,

Philippine Islands,

Municipality of San Isidro,

Province of Nueva Ecija, ss:

I, Cenon S. Monasterial, having been duly sworn, state:

That I was in the house of the deceased Eusebio Yuson, in the Municipality of Gapan, Province of Nueva Ecija, on the 12th day of July, 1912, when Judge Paredes of the Court of First Instance, then presiding at the trial of the case against Emilio Valdez, accused of having murdered Eusebio Yuson, visited Gapan for the purpose of making a personal inspection of the place where it is alleged Eusebio Yuson was murdered. I saw Judge Paredes examine the stairway of the house of the deceased Eusebio Yuson, on which it is alleged he was murdered, and I saw and heard Captain Crockett of the Constabulary point out to the aforesaid Judge the places in the
 473 aforesaid stairway and in the house where it was claimed the small shot fired by the murderer had penetrated, and he showed said Judge the place which had been pointed out to him (Captain Crockett) by Gatmaitan as the place where the latter stood when he fired the shot which caused the death of the said Yuson. I also saw Perfecta de Guzman, the widow of the deceased, showing the aforesaid Judge the manner in which her deceased husband fell on the stairway after he had been shot, she lying down on the stairway, for that purpose, and she also told the aforesaid Judge certain facts which happened at the time of the murder. During the greater part of this interview Perfecta de Guzman was weeping violently, the tears streaming from her eyes. I also saw Captain

Crockett walking on the streets of the municipality of Gapan pointing out to the aforesaid Judge certain streets and houses connected with the case. The said Judge, in company with Captain Crockett and the attorneys of both parties in the case, and other persons, examined the houses of the nephew of the deceased, and its environs, situated near the scene of the murder. I saw the Judge, together with other persons, examine the house of the accused Emilio Valdez, and its environs. During all the occurrences above stated the accused Valdez was absent.

(Sgd.)

CENON S. MONASTERIAL.

Subscribed and sworn to before me, the 20th of September, 1913,
deponent exhibiting his personal certificate of registration
474 No. F-1315143 issued at Gapan, Nueva Ecija, January 22,
1913.

[SEAL.]

(Sgd.)

HOSP. o V. GARCIA,

Notary Public.

My commission expires December 31, 1914.

475

EXHIBIT "C."

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

G. R. No. 8185.

THE UNITED STATES, Plaintiff,
versus

EMILIO VALDEZ and FRANCISCO AMANTE, Defendants.

Murder.

UNITED STATES OF AMERICA,

*Philippine Islands,**Municipality of San Isidro,**Province of Nueva Ecija, ss:*

I, Jose Moreno, having been duly sworn state:

That I was in the house of the deceased Eusebio Yuson, in the Municipality of Gapan, Province of Neuva Ecija, on the 12th day of July, 1912, when Judge Paredes of the Court of First Instance, then presiding at the trial of the case against Emilio Valdez, accused of having murdered Eusebio Yuson, visited Gapan for the purpose of making a personal inspection of the place where it is alleged Eusebio Yuson was murdered. I saw Judge Paredes examine the stairway of the house of the deceased Eusebio Yuson, on which it is alleged he was murdered, and I saw and heard Captain Crockett of the Constabulary point out to the aforesaid Judge the places in the

476 aforesaid stairway and in the house where it was claimed the small shot fired by the murderer had penetrated, and he showed said Judge the place which had been pointed out to him (Captain Crockett by Gatmaitan as the place where the latter stood when he fired the shot which caused the death of the said Yuson, I also saw Perfecta de Guzman, the widow of the deceased, showing the aforesaid Judge the manner in which her deceased husband fell on the stairway after he had been shot, she lying down on the stairway, for that purpose, and she also told the aforesaid Judge certain facts which happened at the time of the murder. During the greater part of this interview Perfecta de Guzman was weeping violently, the tears streaming from her eyes. I also saw Captain Crockett walking on the streets of the municipality of Gapan pointing out to the aforesaid Judge certain streets and houses connected with the case. The said Judge, in company with Captain Crockett and the attorneys of both parties in the case, and other persons, examined the house of the nephew of the deceased, and its environs, situated near the scene of the murder. I saw the Judge, together with other persons, examine the house of the accused Emilio Valdez, and its environs. During all the occurrences above stated the accused Valdez was absent.

(Sgd.)

JOSE MORENO.

Subscribed and sworn to before me, the 20th of September, 1913, deponent exhibiting his personal certificate of registration
477 No. 1635447 issued at San Isidro, Nueva Ecija, April 25, 1913.

(Sgd.)

PERFECTO MENDOZA,

[SEAL.]

Notary Public.

My commission expires December 31, 1914.

Not. Reg. No. 138, Page 44.

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EXHIBIT "D."

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

G. R. No. 8185.

THE UNITED STATES, Plaintiff,

versus

EMILIO VALDEZ and FRANCISCO AMANTE, Defendants.

Murder.

UNITED STATES OF AMERICA,

*Philippine Islands,**Municipality of San Isidro,**Province of Nueva Ecija, ss:*

I, Julio Valmonte, having been duly sworn state:

That I was in the house of the deceased Eusebio Yuson, in the

Municipality of Gapan, Province of Nueva Ecija, on the 12th day of July, 1912, when Judge Paredes of the Court of First Instance, then presiding at the trial of the case against Emilio Valdez, accused of having murdered Eusebio Yuson, visited Gapan for the purpose of making a personal inspection of the place where it is alleged Eusebio Yuson was murdered. I saw Judge Paredes examine the stairway of the house of the deceased Eusebio Yuson, on which it is alleged he was murdered, and I saw and heard Captain Crockett of the Constabulary point out to the aforesaid Judge the places in the aforesaid stairway and in the house where it was
479 claimed the small shot fired by the murderer had penetrated, and he showed said Judge the place which had been pointed out to him (Captain Crockett) by Gatmaitan as the place where the latter stood when he fired the shot which caused the death of the said Yuson, I also saw Perfecta de Guzman, the widow of the deceased, showing the aforesaid Judge the manner in which her deceased husband fell on the stairway after he had been shot, she lying down on the stairway for that purpose, and she also told the aforesaid Judge certain facts which happened at the time of the murder. During the greater part of this interview Perfecta de Guzman was weeping violently, the tears streaming from her eyes. I also saw Captain Crockett walking on the streets of the municipality of Gapan pointing out to the aforesaid Judge certain streets and houses connected with the case. The said Judge, in company with Captain Crockett and the attorneys of both parties in the case, and other persons, examined the house of the nephew of the deceased, and its environs, situated near the scene of the murder. I saw the Judge, together with other persons, examine the house of the accused Emilio Valdez, and its environs. During all the occurrences above stated the accused Valdez was absent.

(Sgd.)

JULIO VALMONTE.

Subscribed and sworn to before me, the 18th of September, 1913, deponent exhibiting his personal certificate of registration No. F-1315173 issued at Gapan, Nueva Ecija, January 27, 1913.

(Sgd.)

HOSP. o V. GARCIA,

[SEAL.]

Notary Public.

My commission expires December 31, 1914.

Not. Reg. No. 98, Page 25.

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EXHIBIT "E."

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. 8185.

THE UNITED STATES, Querellante,
vs.
EMILIO VALDEZ y FRANCISCO AMANTE, Querellados.
Asesinato.

PHILIPPINE ISLANDS,
City of Manila:

L. M. Southworth being by me first duly sworn, deposes and says: I was one of the attorneys of Emilio Valdez, charged with the assassination of Eusebio Yuson on the 17th day of March, 1912. The trial was had at San Isidro, Province of Nueva Ecija, beginning on the 8th and ending on the 13th of July, 1912. I was employed by and really represented said Valdez in said trial, but in accordance with a suggestion by the Court, in order to facilitate the trial, it was arranged that I should nominally appear for Francisco Amante, one of the defendants. After all the witnesses on both sides had been examined at San Isidro, the place where the trial had begun, the prosecution suggested that the Court take a view of the place where the killing was alleged to have occurred. I did not in words oppose the suggestion, but stated that if any witnesses were to be examined or anyone was to talk to the Court at the scene of the occurrence that I was opposed to the proposition to take a view of the premises.

What I said on that occasion will more fully appear in the
482 record, to which reference is hereby made. The thing which

I apprehended would occur did take place at the scene of the occurrence, and in an intensified form. The defendant Valdez was left confined in jail at San Isidro, and the judge went to the scene of the killing, accompanied by the attorneys on both sides. The defendant was not consulted by the judge as to whether or not he desired to accompany the Court in this inspection. Neither were his attorneys consulted. The killing was alleged to have occurred in the Municipality of Gapan, about three miles distant from San Isidro. When the judge arrived at the house of the deceased in Gapan, where the killing is alleged to have taken place, Perfecta de Guzman, the widow of the deceased, explained to the judge many occurrences which she claimed had taken place on the night of the killing of Yuson. She repeated to the judge what she claimed to have said to the deceased just prior to the killing and illustrated how and where the deceased had fallen and discussed many other matters in connection with the case, during all of which time she was crying

and wringing her hands in grief. At the same time Captain E. W. Crockett, an official of the Philippine Constabulary who had been very zealous in working up the evidence against said Valdez, and who, since the trial it has been charged in an affidavit by at least one of the witnesses for the prosecution, was an official of a body which forced and intimidated him, the witness, to give false testimony against the said Valdez, was pointing out to the judge the bullet marks on the stairs where it is claimed the deceased fell, and on the wall of the house, purporting to have been made by the shot fired by the assassin at the time of the killing. The said Crockett pointed out to the judge the place which he, the said Crockett, said had been indicated to him by Gatmaitan, the man who is alleged to have done the shooting, as the place from which the fatal shot was fired, and the said Crockett made other statements to the judge as to what Gatmaitan had stated to him, the said Crockett, as to other circumstances of the case. Said Crockett walked through the streets of Gapan with the judge, pointing out to him various objects which had been referred to in the evidence during the trial, among them being the drug store of de los Santos, the residence of the defendant Valdez and the Municipal Building. During a part of the time that the objects in Gapan were being inspected the judge and said Crockett were alone. The said Crockett discussed the distance between various objects with the judge, giving him his opinions as to the same, and particularly as to the distance from the house of deceased to the house of the defendant. The said Crockett told the judge in this connection that he, the said Crockett, had on a former occasion measured the said distance with the "speedometer" on his motorcycle. Several times during said inspection I made objections as the attorney of Valdez to the judge as to the conduct of Perfecta de Guzman and Captain Crockett, but they were allowed to continue their conversations with the judge. During all of said inspection and taking of evidence in Gapan, said Valdez was confined in jail at San Isidro, three (3) miles away.

(Sgd.)

L. M. SOUTHWORTH.

Sworn to and subscribed before me this 29th day of September, 1913, deponent exhibiting to me his Cedula No. G. 773649, issued at Manila, P. I. on the 28th day of September, 1913.

(Sgd.)

J. M. JORDAIN,
Notary Public.

My commission expires on the 31st day of December, 1914.

No. 33.
Page 10.
Book 1.

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EXHIBIT "F."

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. 8185.

THE UNITED STATES, Querrellante,
vs.
EMILIO VALDEZ y FRANCISCO AMANTE.

Asesinato.

PHILIPPINE ISLANDS,
City of Manila:

Manuel Goyena being by me first duly sworn, deposes and says: I was the interpreter for Mr. L. M. Southworth during most of the trial of Emilio Valdez in July, 1912, and went with the judge and the attorneys on both sides from San Isidro to Gapan where a view was taken of the places where the killing was said to have occurred. I was with Mr. Southworth practically all the time during this inspection. I have read his affidavit marked Exhibit "E" in the motion for a new trial and the same accords substantially with my recollections as to what occurred during the inspection at Gapan.

And further deponent saith, not.

(Sgd.)

MANUEL GOYENA.

Sworn to and subscribed before me this 29th day of September, 1913, deponent exhibiting to me his Cedula No. F 59322, issued at Manila, P. I., on the 18th day of April, 1913.

(Sgd.)

J. M. JORDAIN,
Notary Public.

My commission expires December 31st, 1914.

No. 34.

Page 10.

Book 1.

486 On September 30, 1913, the Supreme Court passed a resolution stating that the motion for a new trial would be considered together with the case on the merits.

Thereafter and on October 20, 1913, the appellant Emilio Valdez filed another brief.

Thereafter and on October 20, 1913, counsel for the appellant Emilio Valdez filed the following assignment of errors:

487 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8185.

THE UNITED STATES, Appellee,

vs.

EMILIO VALDEZ, Appellant.

Assassination.

Assignments of Error.

The Court erred:

1st. (a) In failing to give the appellant the benefit of the legal presumption of innocence, and (b) in assuming appellant's guilt without any credible evidence against him;

2nd. In crediting the wholly untrustworthy testimony of the two principal witnesses for the prosecution, Mateo Arcilla and Juan Gatmaitan;

3rd. In failing to give due weight and consideration to the several unimpeached witnesses presented by the defense.

5th. In allowing the witnesses Captain E. W. Crockett and Perfecta de Guzman to make statements to the Court while engaged in viewing the locus of the crime, concerning important circumstances surrounding the corpus delicti, at a time when the appellant was incarcerated at the Provincial Capital at San Isidro, in violation of Section 15 General Orders 58, and Section 5 of the Act of Congress of July 1st, 1902, commonly known as the Philippine Bill and in violation of Article 6 of the amendment to the Constitution of the United States.

Manila, P. I., October 13th, 1913.

(Sgd.)

L. M. SOUTHWORTH,
J. M. J.,
Attorney for the Appellant,
50 Escolla, Binondo, Manila.

489 UNITED STATES OF AMERICA,
Philippine Islands:

Supreme Court of the Philippine Islands.

UNITED STATES, Plaintiff,
vs.

EMILIO VALDEZ and FRANCISCO AMANTE, Defendants.

For Murder.

Filed Nov. 25, 1913.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Answer to the Motion for New Trial.

Now comes the Attorney-General of the Philippine Islands, and answering the motion for new trial in the above entitled case, to this Honorable Court respectfully represents:

1. That the judgment of conviction rendered by the Court below is in accordance with the law and the weight of evidence.

2. That the Court below did not err in taking a view of the locus in quo at the suggestion of the prosecution and with the consent of the defense (evidence, page 325).

3. That the view was taken after the closing of the trial (evidence, page 326).

4. That upon objection of the defense, the Court below
490 ordered that the result of said view be not made of record (evidence, page 326).

5. That the attorneys on both sides accompanied the Judge at the taking of this view of the locus in quo.

6. That the defendant Emilio Valdéz did not ask to accompany the Judge at the taking of the view, thus, by his silence, waiving his right to be present.

7. That no evidence was taken during the inspection of the locus in quo, in the legal meaning of the term, as may be seen in the affidavits of Perfecta de Guzman, widow of the deceased, marked exhibit 1; of E. W. Crockett, marked exhibit 2; of Felipe Buenca-mino, Jr., marked exhibit 3, and of Antonio Villareal, marked exhibit 4; all of which exhibits are submitted to this Honorable Court, attached to, and made a part of this answer to the motion for new trial.

Wherefore, the undersigned prays the Court to overrule the motion for new trial.

(Sgd.)

IGNACIO VILLAMOR,
Attorney-General.

Copy received this day, November —, 1913.

SOUTHWORTH, HARGIS, ADAMS &
JORDAIN,
(Sgd.) By ISAAC ADAMS,
Attorneys for the Defendants.

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EXHIBIT 1.

UNITED STATES OF AMERICA,
Philippine Islands:

Supreme Court of the Philippine Islands.

THE UNITED STATES, Plaintiff,
versus

EMILIO VALDEZ and FRANCISCO AMANTE, Defendants.

For Murder.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila:

I, Perfecta de Guzman, widow, of age and a resident of the Municipality of Gapan, Province of Nueva Ecija, having been duly sworn, declare:

That I am the widow of Eusebio Yuson, murdered on the 17th of March, 1912, in the Municipality of Gapan, Nueva Ecija; that on the 12th day of July, 1912, between 4 and 5 p. m., the Honorable Judge Paredes, together with the attorneys, came to Gapan; that the Honorable Judge Paredes and the aforesaid lawyers ascended the stone stairway of the open veranda of my house and inspected the place where my deceased husband fell down dead; that neither during the inspection of the stairway and its environs, nor at any other time during the inspection, did I approach Judge Paredes or speak to him, nor cry, nor lie down on the open veranda for the purpose of showing the said Judge the manner
492 in which my husband fell when he was shot; that during the time the Honorable Judge Paredes inspected the stone stairway I was on the open veranda near the door of the house; that the person to whom I remember having spoken was Mr. Pedro Carmen, the attorney de officio, who asked me to point out the place where my deceased husband fell down dead, but this was before the arrival of Judge Paredes.

(Sgd.)

PERFECTA DE GUZMAN.

Subscribed and sworn to before me, October 20, 1913, the declaration having first been translated to the deponent in Tagalo, who exhibited no personal certificate of registration, being exempt therefrom by reason of her sex.

(Sgd.)

LUIS P. TORRES,
Assistant Attorney, Bureau of Justice.

Authorized under Sec. 36, Act 1407, to administer oaths.

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EXH. "2."

UNITED STATES OF AMERICA,
Philippine Islands:

Supreme Court of the Philippine Islands.

R. G. No. 8185.

THE UNITED STATES, Plaintiff,
vs.
EMILIO VALDEZ and FRANCISCO AMANTE, Defendants.

Asesinato.

PHILIPPINE ISLANDS,
City of Manila:

E. W. Crockett being duly sworn according to law deposes and says: That he is Senior Inspector of Constabulary for the province of Nueva Ecija, and was serving in that capacity in July, 1912, and during the trial of Emilio Valdez and Francisco Amante for Assassination of Eusebio Yuson.

That he was in Gapan on July 12th, the day the Court visited the scene of assassination. That he went to Gapan on a motorcycle and did not accompany the court party. That he was not alone with the Judge at Gapan, or at any time during the trial.

That he did not state to the Judge that he had measured any distances on any former occasion by motorcycle, but that after certain distances had been discussed deponent verified same with a cyclometer. And that during the visit of the Court to
494 Gapan to deponent's best knowledge and belief there was no evidence taken, except to view the different places referred to by the witnesses during the trial; that he was not with Judge Paredes on the stone stairway of Yuson's house.

(Sgd.)

E. W. CROCKETT.

Cedula No. 1,311,930.

Cuyapo, Jan. 9, 1913.

Sworn and subscribed to before me this 25th day of October, 1913.

(Sgd.)

GAUDENCIO MEDINA,
Justice of the Peace, Notary Public, ex-Officio.

Reg. No. 169.

Page 75.

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EXHIBIT 3.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

G. R. No. 8185.

THE UNITED STATES, Plaintiff,
versus

EMILIO VALDEZ and FRANCISCO AMANTE, Defendants.

Murder.

UNITED STATES OF AMERICA,

Philippine Islands, City of Manila, ss:

I, Felipe Buencamino, Jr., after having been duly sworn, and at the request of the Attorney-General of the Philippine Islands, freely and spontaneously state:

That I was in the house of the deceased Eusebio Yuson, in the Municipality of Gapan, in the Province of Nueva Ecija, on the 12th of July, 1912, at the time when Judge Paredes of the Court of First Instance visited said Municipality of Gapan in an extra-judicial capacity.

I saw Judge Paredes inspect said municipality and particularly the house and the lot on which the house of the accused Emilio Valdez is located, as well as the house and the lot on which the house of the deceased Eusebio Yuson is located. On said occasion

496 Judge Paredes neither received any evidence nor admitted any testimony referring to the case then being prosecuted against the aforesaid Valdez. According to my best recollection I did not on that occasion see Perfecta de Guzman, the widow of the deceased Yuson, cry but I saw her at a place distant from the Judge.

I also state that on that occasion Captain Crockett of the Constabulary did not give any evidence before Judge Paredes, but, as I remember, said Crockett had a discussion with attorney Southworth in regard to the distance between the house of the deceased Yuson and that of the accused Valdez, but according to my best recollection it did not take place in the presence of the Judge. That the deponent and Mr. Southworth also measured the distances to satisfy themselves, but this also was not done in the presence of Judge Paredes.

(Sgd.)

FELIPE BUENCAMINO, JR.

Subscribed and sworn to before me, this 27th of October, 1913, deponent exhibiting at the time his personal certificate of registra-

tion No. F-1,310,215, issued at Cabiao, Nueva Ecija, on January 11, 1913.

(Sgd.)

JOAQUÍN PARDO DE TAVERA,
Assistant Attorney, Bureau of Justice.

Authorized under Sec. 36, Act 1407, to administer oaths

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EXH. "4."

UNITED STATES OF AMERICA,
Philippine Islands:

Supreme Court of the Philippine Islands.

UNITED STATES, Plaintiff,
vs.

EMILIO VALDEZ and FRANCISCO AMANTE, Defendants.

For Murder.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Antonio Villareal, being first duly sworn, deposes and says:

1. That he is assistant attorney in the Bureau of Justice, Manila, P. I.

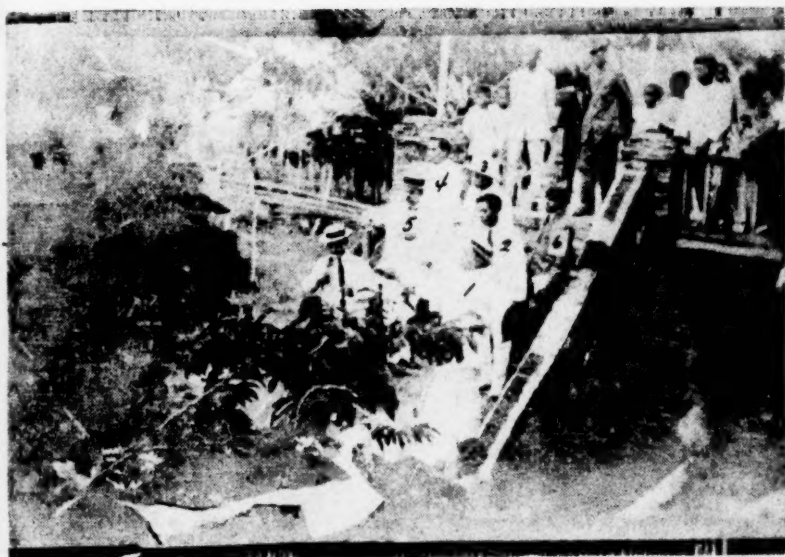
2. That he was assigned by the Attorney-General to represent, and did represent, the Government in the prosecution of Emilio Valdéz and Francisco Amante for the crime of murder.

3. That after the closing of the trial, he, together with the attorneys for the defendants Messrs. Alfredo Chicote, Vicente Miranda, L. M. Southworth and Pedro Carmen, and the private prosecutor Mr. Felipe Buencamino, Jr., accompanied Judge Paredes to Gapan, Nueva Ecija, for the purpose of taking a view of the locus in quo.

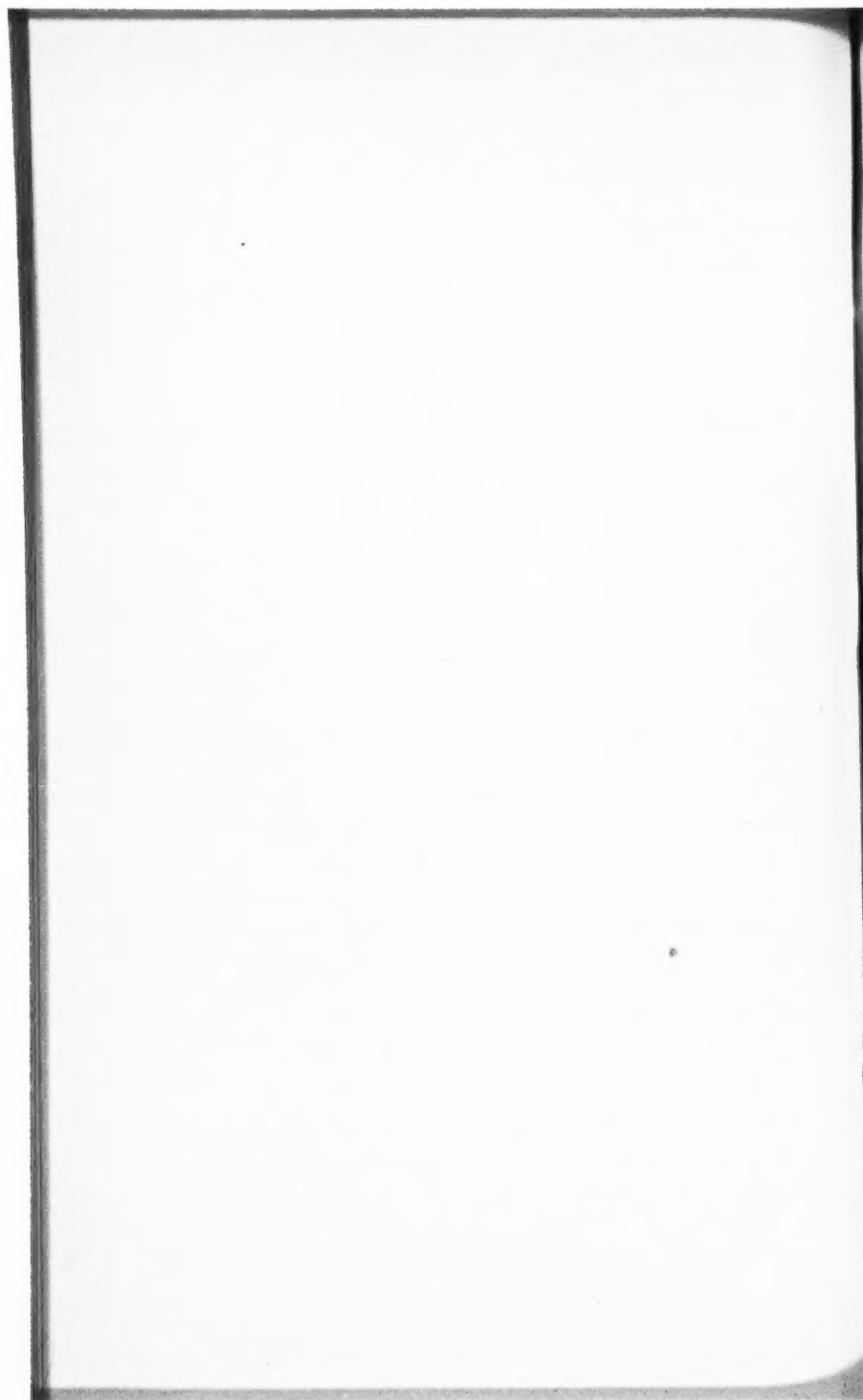
498 4. That he was with the Judge and the said attorneys while a view of the place was being taken, and that at no time during the said inspection did he see Perfecta de Guzman, the widow of the deceased, come near or talk to the Judge or weep or illustrate how her husband had fallen on the stone stairway of the house.

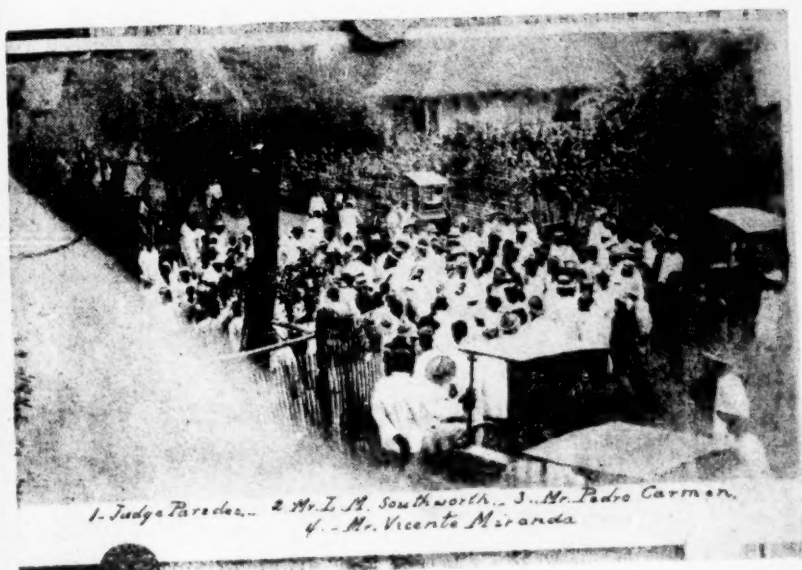
5. That to the best of his recollection she was all the time near the wall on the platform at the top of the stairway, as may be seen in the following picture, taken at the time the Judge and the attorneys were inspecting the stone stairway and its surroundings:

(Here follows photograph, marked page 498.)



1, Judge Isidro Paredes; 2, Mr. Felipe Buencami-
nc, Jr.; 3, Mr. Vicente Miranda; 4, Mr. Pedro Carmen;
5, Mr. Alfredo Chicote; 6, Antonio Villareal; 7, Mrs.
Perfecta de Guzman.





1.- Judge Parades... 2 Mr. L. M. Southworth... 3.- Mr. Pedro Carmen.
4.- Mr. Vicente Miranda

6. That to the best of his recollection, he did not see Captain E. W. Crockett discuss alone with the Judge or give any
499 evidence.

7. That the different places testified to by the witnesses in the court below were pointed out to the Judge by the private prosecutor Mr. Felipe Buencamino, Jr., and by the attorneys for the defendants Messrs. Alfredo Chicote, Vicente Miranda, and Pedro Carmen as may be seen in the above picture.

8. That during the inspection the Judge was always accompanied by the attorneys for the defendants, Mr. L. M. Southworth included, as may be seen in the following picture and in the above:

(Here follows photograph, marked page 499.)

9. That aside from the inspection of the different places mentioned by the witnesses during the trial, no other evidence was received by the Judge during the said view.

500 Further deponent sayeth not.

(Sgd.)

ANT. VILLA REAL.

Subscribed and sworn to before me this 21st day of November 1913, deponent exhibiting his certificate of registration No. F9560, issued in Manila on January 20, 1913.

(Sgd.)

JOAQUIN PARDO DE TAVERA,

Assistant Attorney, Bureau of Justice.

Authorized under Sec. 36, Act 1407, to administer oaths.

501 Thereafter and on November 26, 1913, the Supreme Court passed a resolution stating that the answer to the motion for a new trial would be considered together with the case on the merits.

Thereafter and on December 12, 1913, the Attorney-General filed his brief.

Filed Feb. 19, 1914.

502 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

G. R. No. 8185.

THE UNITED STATES, Appellee,
versus
EMILIO VALDEZ, Appellant.

Sworn Statement of Isaac Adams in Support of the Petition for a Rehearing.

Isaac Adams after having been duly sworn states: That Mateo Arcilla, a main witness for the prosecution in the above entitled case and in the case of The United States versus Juan Gatmaitan, G. R. No. 9021, was, on the 14th day of July, 1913, convicted of the murder of his wife by the Court of First Instance of the Province of Nueva Ecija, and that since said conviction he has been detained in Bilibid Prison awaiting the decision of his case on appeal, which appeal bears G. R. No. 9112; that during the last hours of the afternoons of Saturday and Sunday, February 14 and 15, 1914, respectively, the undersigned had two interviews with the aforesaid Arcilla in the presence of the prison guards Damian L. Pangan and Saturnino Calingasan, and company with Mr. Sevilla (Catalino) a practicing attorney and notary public, the purpose of said interviews being to obtain a statement from Arcilla under his present actual status, of his participation in the crime in re-

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gard to which he testified in the cases against Valdez and Gatmaitan; that, after Arcilla had been sworn by Mr. Sevilla, the undersigned questioned him by means of questions written in English and translated to Arcilla in Tagalo by Mr. Sevilla, Mr. Sevilla, in his turn, writing the answers in Tagalo and translating the same to the undersigned; and that in this manner fifteen questions were put to Arcilla by the undersigned, all of which the former answered, and that the original copy of the questions and answers mentioned is attached to this sworn statement, being marked Exh. "A", the translation of which to Spanish is marked Exh. "B"; that no influence was used by the undersigned to obtain said statement from Arcilla, the sole purpose of the undersigned being to put this court in a position to understand the actual position of Arcilla in regard to the cases in which he testified against Valdez and Gatmaitan.

(Sgd.)

ISAAC ADAMS.

CITY OF MANILA,

Philippine Islands:

Subscribed and sworn to before me this 17th of February, 1914, deponent exhibiting his personal certificate of registration No. F-18979, issued at the City of Manila, P. I., on the 10th day of February, 1914.

[SEAL.]

(Sgd.)

J. H. JORDAIN.

504 UNITED STATES OF AMERICA,

Philippine Islands:

In the Supreme Court of the Philippine Islands.

G. R. No. 8185.

THE UNITED STATES, Appellee,

versus

EMILIO VALDEZ, Appellant.

Sworn Statement of Catalino Sevilla in Support of the Petition for a Rehearing.

Catalino Sevilla, under oath states: That he is a practicing attorney and notary public of the City of Manila; that on the 14th and 15th of February, 1914, he, as a notary public, administered oath to Mateo Arcilla, a prisoner in Bilibid Prison, whereby the latter promised to give truthful answers to the questions of Mr. Isaac Adams in regard to the circumstances connected with the murder of Eusebio Yuson, of Nueva Ecija, which occurred on the night of March 17, 1912; that, after said oath had been administered, Mr. Adams asked fifteen question- in English, the originals of which in English and the answers of Arcilla in Tagalo appear in Exh. "A", which is attached to the sworn statement of Mr. Adams in support of a petition for a rehearing in case G. R. No. 8185, and that said questions were

duly translated by him (Sevilla) to Arcilla and the answers were duly written in Tagalo, as appears in said Exh. "A" and that Exh. "B" which is attached to the sworn statement of Mr. Adams is an exact translation into Spanish of said questions and answers; that the examination took place in the presence of prison guards ——— and ——— and that nothing was said to Arcilla by either Mr. Adams or himself in regard to statements desired from him except that he should tell the exact truth, neither was he offered any reward of any kind for making said statements.

(Sgd.)

CATALINO SEVILLA.

CITY OF MANILA,

Philippine Islands:

Subscribed and sworn to before me this 17th of February 1914, deponent exhibiting his personal certificate of registration No. F-7328, issued at the City of Manila on January 13, 1914.

[SEAL.]

(Sgd.)

J. H. JORDAIN.

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EXHIBIT "B."

Statement under oath of Mateo Arcilla made at Bilibid Prison, Manila, on Saturday and Sunday, February 14 and 15, between the hours of five and six p. m. before Catalino Sevilla and Isaac Adams, the latter putting the questions and the former acting as interpreter, the questions, as written below, being in the handwriting of Mr. Adams and the answers in that of Mr. Sevilla, Arcilla having first been sworn to declare the truth by Mr. Sevilla, a Notary Public.

1. Where were you, Mateo, when you first heard that Mr. Yuson had been shot?

1. I was in the house of Leoncio located in his fields in Santo Cristo, Nueva Ecija.

2. What day was that?

2. On Monday morning very early the nephew of Lieutenant Sebio called Catalino went and told Benito de los Santos that his uncle Sebio was murdered on Sunday night by being shot and Benito is the one who told me.

3. Where were you on Sunday, the day of the shooting?

3. On that Sunday I was weaving a "languay" of bamboo and that night after supper we went to bed.

4. Where were you the day before and what were you doing?

4. On Saturday morning I was gathering sugar cane in the fields of Emilio Valdez in Santo Cristo and about midday I asked leave of the boss and went to assist at the funeral that afternoon of a child, the daughter of my nephew.

5. Where did you bury the child, and who accompanied you?

5. We buried the child in the public cemetery in the barrio of Manginoo and I was the one who dug the grave and I had many com-

panions, both young and old. Victor Robaya was also there and when the grave had been filled up Victor went away saying that he had to go to the house of Emilio Valdez, as the latter had something to send of Francisco Amante.

6. When did you next see Robaya?

6. That same afternoon as it was growing dark Robaya and I met and we went to the barrio of Santo Cristo.

7. What, if anything, do you know about Robaya having received from Valdez a note for Francisco Amante?

7. When we again met, Victor Robaya told me that Emilio Valdez had given him a letter for Francisco Amante, but I did not see or read that letter, and the reason why I testified I did was because Lieutenant Esterffee and Sergeant Villa of the Constabulary instructed me to do so.

8. Did you see Francisco Amante on that Saturday night after your return to Santo Cristo from the funeral?

8. No sir, I did not see him.

508 9. Were you at (in the poblacion of) Gapan on the day that Mr. Yuson was shot?

9. No sir, I was in Santo Cristo at the house of Leoncio Domingo all day.

10. Do you know, Mateo, why you were charged with the shooting of Yuson?

10. No sir, I do not know why they accused me.

11. Where were you taken after your arrest and who first spoke to you about the Yuson murder.

11. In the house of Captain Crockett in Factoria (San Isidro) and through and interpreter, who was a Constabulary Sergeant, Captain Crockett said to me that I was the companion of Emilio Valdez and that we shot Eusebio Yuson; but I answered him that that was not true and that I could not make such an admission even though they shoot me.

12. What was then done with you?

12. When I refused to make this admission they put my name down in the book "for murder", according to them, and about two o'clock in the afternoon they put me on a train in company with two Constabulary soldiers and took me to the barracks in Cabanatuan.

13. Had you any companions while in jail at Cabanatuan?

13. Yes sir, Lucas Figueroa, and when Juan Gatmaitan arrived there were three of us.

14. What conversation, if any, was there between yourself and Lucas Figueroa about the murder of Yuson?

14. Lucas Figueroa told me and asked me to admit that Emilio Valdez, Juan Gatmaitan and I were the one- who killed Eusebio Yuson, and he stated that he had seen me passed by the corner, but I denied it and told him that that was not true.

15. What, if any, acquaintance did you have with Lucas Figueroa and Juan Gatmaitan prior to your arrest?

15. I was acquainted with Lucas Figueroa theretofore by reason of having worked with him on the railroad; as regards to Juan Gatmai-

tan, he is known in our neighborhood as a carabao thief and I know him although perhaps he does not know me.

(Sgd.)

MATEO ARCILLA.

Signed in the presence of:

(Sgd.) D. L. PANGAN.

(Sgd.) S. CALINGASAN.

510 On March 26, 1914, the Supreme Court passed the following minute order:

"The Court not having been able to arrive at an agreement as to the disposition of the appeals in the cases of United States vs. Juan Gatmaitan, R. G. No. 9021, and United States vs. Emilio Valdez et al., R. G. No. 8185, concluded to postpone further consideration thereof until the July term; and in view of the gravity of the penalty imposed in the court below and of the extensive oral arguments of counsel on the submission of these cases, the court further resolved to authorize counsel in both cases to extend their oral arguments in writing, and submit typewritten copies thereof in English and Spanish, not later than May 15, 1914."

The case was duly submitted and on March 25, 1915, the Supreme Court rendered the following decision:

511 UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

G. R. No. 8185.

THE UNITED STATES, Plaintiff and Appellee,
versus
EMILIO VALDEZ, Defendant and Appellant.

Submitted March 7, 1914.

Filed the Decision March 25, 1915.

G. R. No. 9021.

THE UNITED STATES, Plaintiff and Appellee,
versus
JUAN GATMAITAN, Defendant and Appellant.

Submitted January 12, 1914.

Decision.

Emilio Valdez, the defendant and appellant in case No. 8185, and Juan Gatmaitan, the defendant and appellant in case No. 9021, were charged in the court below with the murder of Eusebio Yuson,

deceased. They were tried separately, by different judges, and

512 each was convicted of the crime with which he was charged.

Valdez was sentenced to death, and Gatmaitan to cadena perpetua (life imprisonment), he having been given the benefit of the provisions of Article 11 of the Penal Code, upon a finding that he is a densely ignorant man, of a low order of intelligence and lacking in instruction both mental and moral.

The records of the separate trials were brought here independently, but, at the request of counsel, the appeals were heard and considered together, in order to give counsel for the defense an opportunity to develop any inconsistencies or contradictions which might appear as a result of a critical analysis and comparison of the evidence of record in both cases. As will be seen hereafter, the case for the prosecution against both of the accused rests in large part upon the testimony of the same witnesses, and it was deemed in the interests of justice to permit counsel for the defense to make the fullest use of all the evidence adduced in both cases in behalf of both and each of them. Counsel rightly contended that if the credibility of the material witnesses for the prosecution in either case can be impeached successfully by a critical analysis and comparison of all the evidence of record in the two cases, the judgment of conviction entered in that case should not be affirmed without first giving the accused an opportunity to take advantage of the weakness thus developed in the testimony upon which he was convicted.

513 Valdez was tried first, Gatmaitan being one of the principal witnesses for the prosecution. Upon the trial of Gatmaitan, some time afterwards, his own evidence, given at the trial of Valdez, was used against him. Otherwise the evidence for the prosecution was substantially the same in both cases. Gatmaitan, however, went on the witness-stand in his own defense and repudiated his testimony given at the trial of Valdez; and at the trial of Gatmaitan a number of new witnesses were called in a definite attempt to fix the responsibility for the murder upon a nephew of the deceased, against whom the finger of suspicion was raised at the trial of Valdez, but without any very determined effort by the defense to establish his guilt.

The decision filed by the trial judge in the Valdez case sets forth, as we believe, a fair and impartial account of the material facts disclosed by the evidence, and for a proper understanding of the issues raised on this appeal perhaps we can do no better than to set out his opinion in full. It is as follows:

"Eusebio Yuson lived with his wife Perfecta de Guzman in their house situated on Calle del Corro in the municipality of Gapan, Province of Nueva Ecija. On Sunday morning, March 17, 1912, he left the house and went to the cockpit of San Miguel de Mayumo, where he was in the habit of going every Sunday to gamble on the fighting cocks. At seven o'clock at night of the same day his wife awaited him, for he was to return at that hour, as in fact he did by the last train; and that her husband might see his way she had ordered a light placed in the zaguan or vestibule. Yuson arrived
514 arrived in a carromata, alighted from the vehicle in front of his house, but he did not enter the building by the front door,

that is, by passing through the zaguan, as his wife wished him to do. She was at the window and said to him in a loud voice: 'Pass through the zaguan which is lighted, and not by the other door which gives on the stair of the azotea, because that is dark and you may stumble as you are short-sighted.' He preferred to pass by the stair to the azotea, and before he had climbed to the top and upon arriving at the second step therefrom, a shot from a gun was heard, the shot from which, entering Yuson's back and passing completely through the thoracic cavity, caused his instantaneous death, and he fell headlong and face downwards on that step. The servants of the house, on learning of the occurrence, cried out: 'He has met with a misfortune!' Doña Perfecta, who from her seat near the window had gone to the azotea for the purpose of meeting her husband, on hearing the shot and the cries, fell in a faint; when she came to she succeeded with the aid of the servants in getting up and then went toward the stair where she found the lifeless body of her husband. It was bathed in blood, pierced with shot and was lying near the third or fourth step from the bottom where it had slid from the second step from the top in an oblique or diagonal position. The widow and the other inmates of the house immediately called out for help and were heard by a nephew of the deceased, who lived in a house near-by and who opened his window and fired three shots in the air with his shotgun for the double purpose of putting the robbers to flight, for he then believed that an assault had been committed on Yuson's house, and of alarming the town by notifying the people of what had happened. A little while afterwards, that same night, the local authority visited the place of the occurrence, accompanied by the president of the municipal board of health, José de los Santos. The latter examined the body of Eusebio Yuson and found thereon the following wounds: nine gunshot wounds penetrating the right side of the posterior thoracic wall, or the back, and five holes on the right of the front part of the said thoracic wall where the shot had passed out. The majority of the first holes were about two centimeters apart, and others as much as seventeen centimeters. The holes in front were twelve centimeters apart. According to the aforementioned president of the board of health, these wounds affected the right lung and other important organs in the thoracic cavity and caused a

515 hemorrhage which produced the almost instantaneous death of Eusebio Yuson. Captain Crockett, chief inspector of the Constabulary of this province, having learned of the crime, on the following day visited the place of its commission for the purpose of examining the premises and surroundings and taking the necessary information. The result of his examination and investigation appears in his testimony, and that testimony shows that the shot which caused the death of Eusebio Yuson must have been fired from a double-barreled shotgun loaded with shells containing nine small bullets or buckshot; that the persons who fired the shot must have been situated a few yards away from the left side of the stairway, near an inner fence of the yard and protected by the shade of an acacia tree. On the ground at the right side of the stair, the captain found a wad that had been used in a shotgun and also a small leaden bullet embedded in a brick and cement pillar at the top of the stairway and

in the same direction in which Yuson ascended when he was shot. This witness spoke of the condition of the yard and said that it was surrounded on all sides by an outer fence, broken down in several places, and by another inner fence which ran alongside the stair close to the trunk of the acacia tree. Those facts, brought out in the testimony of the aforementioned Captain Crockett, José de los Santos, Perfecta de Guzman and Cándido García, show the existence and commission of the crime of murder, the object of the present action.

"From the testimony of other witnesses presented by the prosecution, namely, Juan Gatmaitan, Mateo Arcilla, Lucas Figueroa, Victor Robaya and Tomás Diego, taken altogether, it is concluded that the violent death of Eusebio Yuson was caused by the defendant Emilio Valdez and the said witness Juan Gatmaitan, and was effected by means of the double-barreled shotgun belonging to the other defendant, Francisco Amante.

"For reasons which will be set forth hereinafter, Emilio Valdez, from the fall of 1911 or before the time of the rice harvest of that year, had resolved to deprive Eusebio Yuson of his life. With this end in view, he sought to avail himself of the assistance of Juan Gatmaitan and to that end, after the harvest, went to the latter's hut in the rice fields outside the town. Purely as though it were a matter of a lucrative business, he proposed to Juan Gatmaitan that the latter

516 kill Eusebio Yuson and promised him P900 if he would, but Gatmaitan was afraid and rejected the proposal. One of the details of Valdez' plans was that Yuson should be killed with a firearm, but as he dared not use his revolver for the purpose for fear of incriminating himself, since he had been issued a permit by the Government for the use of that weapon, he preferred to employ the double-barreled shotgun owned by his brother-in-law, Francisco Amante, who was also provided with a permit. Therefore, on Saturday afternoon, the day before the crime was committed, he sent a letter by Mateo Arcilla to Francisco Amante, who was out on the rice plantation, instructing him to bring the shotgun to the pueblo that night because Valdez needed it. Consequently, Amante took the shotgun to Valdez' house and in doing so had himself accompanied in his carromata by Mateo Arcilla, because it was already growing dark and because Arcilla was an old tenant of Valdez. Amante, besides being the latter's brother-in-law, was his manager on the hacienda or lands situated in the barrio of Santo Cristo in Gapan. On the morning of the said Sunday, after mass, Mateo Arcilla went to his employer's house, as he was in the habit of doing. He found Valdez in a room of the ground floor and the latter then proposed to him, also as being a good business transaction for which Valdez would pay P1,000 and furnish the shotgun, that Arcilla kill Eusebio Yuson. Arcilla through fear rejected the proposal and, besides, having understood furthermore that the act contemplated was a bad one, called the attention of his employer to that fact and asked him why he was trying to kill Yuson, since the latter was a very good man and very charitable to the poor. Valdez, despite the rejection of his proposal, first by Gatmaitan and afterwards by Arcilla, did not desist from his criminal purpose and, in order thenceforth to main-

tain secrecy in his plans, took good care to impose silence upon the said witnesses under the threat that if they betrayed him he would either kill them or order them killed by some of his large following. The said Sunday, March 17th, was the day chosen by Valdez for the commission of the crime, and he selected the time when Eusebio Yuson would return for the night to his house from the cockpit of San Miguel de Mayumo. At about five o'clock in the afternoon Valdez went in his *carromata* to the rice field, looked for Juan Gatmaitan in the latter's shack and, having found him, invited him to take a ride through the streets of the town. Gatmaitan accepted and was taken to Valdez' house where he waited outside while Valdez went in to get and load his shotgun; a few moments afterwards Valdez came down the stairs of the *azotea* and from the yard handed the shotgun over the fence to Gatmaitan, who was waiting for him outside in the street. Valdez then immediately joined Gatmaitan and they both walked in the direction of Eusebio Yuson's house until they arrived at a corner, between an empty store near Yuson's yard and Dr. Adorable's house on the other side of the street, where they halted. In order better to prepare for the deed and insure its impunity, Emilio Valdez, on returning to his house with Gatmaitan and finding Mateo Arcilla waiting for him in the kitchen, ordered the latter to pass along the street in front of the town hall to see if the municipal police went out on patrol, and charged Arcilla, in case they did, to notify him at the said corner where Valdez would wait for him. That same afternoon Valdez had spoken to Lucas Figueroa and offered him P20 to watch the movements of Eusebio Yuson and notify the latter's arrival to Valdez, who would await Figueroa at the corner aforementioned. A little after seven o'clock at night and immediately after Valdez and Gatmaitan had received notice from Figueroa that Yuson's *carromata* was approaching, Valdez, together with Gatmaitan, who carried the shotgun in his hand, entered the yard surrounding the house by passing under the fence; they then posted themselves near a large acacia tree to await Yuson who, almost at the same time, alighted from the *carromata* and entered the yard. Finally, while Yuson was climbing the stairs of the *azotea* and had reached the second step from the top, Valdez ordered Gatmaitan to fire at Yuson, but as Gatmaitan either did not wish or did not know how to shoot, Valdez helped him and personally fired the shot that caused the death of Yuson, as hereinbefore related.

"The crime committed by Valdez and Gatmaitan is that of murder, provided for and punished by Article 403 of the Penal Code and qualified by the specific circumstances of known premeditation, treachery, and of price or promise of reward. No great effort is needed to prove that the crime under prosecution was attended by these three circumstances. Any one of them is sufficient to qualify it as murder, and in this case the other two should be considered as generic aggravating circumstances; adding to these the aggravating circumstance of nocturnity, because the crime was purposely committed at night, the result is that the murder in question was perpetrated with three aggravating circumstances and

without any mitigating one. Emilio Valdez is a highly educated man and is very prominent in the pueblo of Gapan both on account of his social standing and his wealth.

"The evidence shows beyond all reasonable doubt that Emilio Valdez is guilty of the murder of Eusebio Yuson, as a principal, by inducement and by direct participation: inducement, because he ordered and paid others to kill Yuson; and material participation, because Valdez himself, as we have seen, cooperated in the perpetration of the crime.

"Emilio Valdez offered no serious defense in his behalf. He merely produced evidence tending to prove: (1) The impossibility of having caused the death of Yuson with Francisco Amante's shotgun, because this weapon was in the hacienda warehouse during the night of Saturday, March 16th, and for some days thereafter; and (2) an alibi, that is, the impossibility of Valdez having committed the crime, because, on the date of its commission, from five o'clock in the afternoon until after seven o'clock at night, he was at the house of a woman named Guillerma Liuag in the municipality of Gapan; that thence he went directly to his house where he had scarcely arrived when he heard the first shot; that two minutes afterwards he went to the window and from there called to the municipal police in the town hall, thus bringing the occurrence to their attention, and asked them why they did not go immediately to the place.

"The first point of defense above mentioned is inadmissible. The witnesses presented in its support were very partial and interested. Andrea Reyes is the mother of the defendant Valdez. Engracio Nolasco is an old tenant of the Valdez family. Andrea Reyes, upon being cross-examined by the fiscal, testified that she was asleep at eight o'clock of the night when she said that Francisco Amante went to the threshing floor, and that she did not awake nor see the latter again until the following day at the time when Amante left the warehouse to go to take the train for Manila. So that, during the night, while Andrea Reyes was sleeping, the shotgun might have been taken from the warehouse without her knowledge. The old man Nolasco said that he had a house where he lived alone; nevertheless he pretended that he slept in the warehouse, though no special
519 reason is known why he should have passed the night there.

As regards the alibi set up by Emilio Valdez, it should be rejected on account of the interest and partiality shown by the witnesses brought forward to support it, and because this alibi, according to the evidence introduced by the Government in rebuttal is false. The witnesses presented in support of the alibi are: Matea Domingo, a servant long in the service of Emilio Valdez; Miguel Liuag, a candidate for president at the last election and in whose behalf the defendant Valdez actively worked as his principal supporter; Antonio Liuag, a farm laborer, who as it is said is the best 'gallo' of the party of Valdez and Liuag, the word 'gallo' meaning that Liuag would never separate from them or their party; and, finally, Gil Abad who, as he testified, while passing in front of the house of Guillerma Liuag at about half past six o'clock in the evening, saw Valdez and Miguel Liuag looking out of the window and invited them to come

with him and play dominoes in Dr. Pardo's pharmacy; notwithstanding, Abad did not go to this pharmacy but to that of Dr. De los Santos. Abad denied having heard shots on the night of the occurrence, but nevertheless, on cross-examination he contradicted himself, for he gave it to be understood that he not only heard those shots, but also was aware of the disturbance made by the people and of the fact that they all closed their houses in fear of the occurrence, which was thought at the time to be an assault by robbers upon Yuson's house.

"It is obvious that witnesses of this kind can not successfully support an alibi, and more specially when, as before stated, it has been disproved by rebutting evidence. Joaquin Garcia, a witness for the prosecution, testified that after five o'clock in the afternoon or before sunset of the Sunday when the crime was committed, he went to Guillerma Liuag's store, situated in the lower part of the latter's house, and while there saw Emilio Valdez go out of the door and direct his steps toward the east of the rice field. Several of the police officers who on that night went to the scene of the crime stated in their rebutting testimony that they did not hear Emilio Valdez shout to them from his house, and this, notwithstanding that his house is but a short distance from the town hall where they could very well have heard him, however little he had raised his voice. One
520 of these policemen, a corporal, who was mentioned by Valdez as being the same corporal with whom he spoke when this officer chanced to pass along the street in front of the window of the house, testified that when he saw and spoke to Valdez it was not two minutes after the shot, but a long time afterwards.

"So, then, the evidence of the defense does not prove Valdez' innocence. His salvation must be sought, not in his evidence, but in that of the prosecution. If the evidence of the prosecution is not conclusive and any reasonable doubt should arise from its insufficiency, Valdez may be favored by the benefit of that doubt; otherwise, it must inevitably be held that he is guilty. The defendants understood this and, for the purpose of discrediting the principal witnesses of the prosecution and impeaching their testimony, proved: (1) That Gatmaitan, Arcilla and Figueroa pleaded guilty, in the justice of the peace court, to the charge of murdering Yuson, exactly as they were charged in the complaint there filed by Captain Crockett; (2) that Gatmaitan was convicted of the crime of theft and sentenced therefor to two years, eleven months and eleven days of *presidio correccional*; and (3) that Gatmaitan and Figueroa, prior to the trial, subscribed and swore to affidavits, the contents of which do not agree with the testimony respectively given by them at the hearing of this case. The defendants also tried to show that several complaints were filed in this cause, and alleged that this difference proves that Gatmaitan, Arcilla and Figueroa made different statements to the fiscals each time that the latter questioned them in the investigation. The court, however, is of the opinion that, notwithstanding these claims made by the defense, the testimony in question has not been destroyed, but must be considered and taken into account in rendering judgment in this case.

"The reason why Arcilla and Figueroa pleaded guilty before the justice of the peace is explained by these men in their testimony both on direct examination and in rebuttal. Their explanation should be accepted as satisfactory, for it is seen that these witnesses are very ignorant and entirely lacking in education. It only needs to be remembered that, in order to give an idea of the years or months, they refer to the last year's crop or to that of the year before, or to the rainy season or to the dry months; that, to determine the hours of the day, they mark the height of the sun over the horizon, and, to fix distances, they know of no other measure than the rope used on a carabao, or compare the distance they are questioned about with that lying between the chair in which they sit and the building or the corner in front of them. With respect to Gatmaitan's confession, let it be borne in mind that it in no wise conflicts with his testimony, for he admits now, as he did before the trial, that he assisted in killing Yuson.

"That Gatmaitan is a criminal and a convicted thief, is a fact that in no wise favors Valdez. Valdez would not have dared to make the criminal proposal to an honorable person, for instead of finding an accomplice or assistant, he would have found an accuser. It is only thieves who allow themselves to be seduced by filthy lucre, though in exchange for the commission of a crime. Valdez could not have found another better instrument than Gatmaitan. He knew his history and his past record. It is Valdez who has brought into the record of this case the judgment of conviction rendered against Gatmaitan for theft. It is understood why Valdez, after having sought Gatmaitan, first tried to win his good will and afterwards corrupt him with money.

"The fact that before the trial Gatmaitan and Figueroa swore to statements that differed from those they made under oath at the trial, was explained by them when they testified as witnesses both on direct and on cross-examination. We must not lose sight of the state of mind of those witnesses when they subscribed and signed their affidavits. They had been solemnly threatened with death at the hands of Valdez or his band, if through their statements or revelations Valdez should be imprisoned. They testified that this threat and the consequent fear that it would be carried out weighed on their minds while those affidavits were being drawn up. Nothing in the record shows that the explanations of these witnesses are false. On the contrary, it is seen that as in the first affidavit by Figueroa the affiant makes no mention whatever of the name of Emilio Valdez, in his second affidavit, made three days after the first, he finally does name Emilio Valdez; and this is because at the time Figueroa made each of these affidavits he was already in the power of the Constabulary, and it is natural that he should believe himself safer in that situation from the threats or the vengeance of Valdez. There

is no evidence whatever that Figueroa made such statements solely and exclusively under hope or promise of safeguard and protection. As regards the affidavit of Gatmaitan, it is to be noted that its contents are not in conflict with his testimony in this case, but that such testimony is virtually an amplification

of that affidavit. Gatmaitan said that through fear of Valdez he did not in the beginning testify to all that he knew; but when he testified in the hearing of the case before this court, he finally told the whole truth.

"That the complaint filed in this case by the fiscal Villa-Real, an assistant attorney of the Bureau of Justice, differed from that subscribed by the provincial fiscal and which was read to the defendants Valdez and Amante, does not necessarily mean that the witnesses for the Government gave contradictory or false information. Such a discrepancy will sometimes arise from an error or a misunderstanding on the part of the complainant. For this reason the law allows him to amend the complaint, both in substance and form, before being read to the accused and answered by them.

"There are many who believe that the mere fact of a person's offering to testify in a case as a witness for the Government, is a sufficient reason for denying him credence, in spite of his oath to tell the truth; they also believe that if such a person was in the power of the Constabulary and while in its custody made statements, these statements are false, and are only the result of inducement or threats or else of a promise of clemency or protection. But we have seen that Juan Gatmaitan is accused of the same crime of murder with which Valdez and Amante are charged; and that Gatmaitan, upon taking the witness-stand, was warned by the defense that any incriminating testimony given by him against Valdez and Amante might hang them; likewise that incriminatory statements by him against himself might result in his sharing the same lot, despite any promise of protection and liberty which might have been made to them by any prosecuting officer, clerk of court, member of the Constabulary, or jailer. Gatmaitan was informed of all this; and if, notwithstanding such information and the warning which was so emphatically addressed to him by the defense, he persisted while testifying in inculcating others and incriminating himself,

523 the court certainly finds no manner of reason to reject that testimony. Should it be thrown out merely because Gatmaitan was a witness for the Government? It is evident that it should not. Should we reject that testimony solely on account of a suspicion that the witness, under promise of liberty, might have been taught or induced to say what he did? This is incredible, the more so if we take account of the fact that the prosecuting attorney, instead of asking for the release of Gatmaitan, has, according to the record, recently filed a formal complaint in this court, under No. 2093, against Gatmaitan, charging him with the murder of Yuson. Up to the present time no formal complaint has been presented against Arcilla and Figueroa, but, as has been seen, they were charged with this crime in the preliminary investigation made in the justice of the peace court and by reason of the complaint are now prisoners in the custody of the Constabulary, by order of the justice of the peace. Shall we also say that these witnesses were so detained for the purpose of drawing from them incriminating testimony against Amante and Valdez? This is a supposition which these witnesses deny and, consequently, it appears to be more just

and reasonable to believe that, if they are now in the custody of the Constabulary, it is for the double purpose of protecting them from the vengeance of Valdez and Amante and of withdrawing them from the powerful influence of Valdez and his followers, who otherwise might make them retract their previous statements. The record contains a fact in support of this opinion: The witness Braulio Arcilla testified that, after Valdez had sent for her several times, she went to his house and he there instructed her to make a statement favorable to her brother Mateo Arcilla, in order that the latter might be set at liberty, and Valdez said that not only would he defray the expenses of the attorney who prepared that statement, but also those incurred by Braulia in going to Gabanatuan to see Mateo. At the same time Valdez instructed Braulia that when she saw her brother Mateo she should tell him to plead guilty, for such an admission was of no importance as the latter could withdraw it or change it at any time afterwards. On that same occasion Valdez and his sympathizer, Mariano Suniga, intended to write a letter to Mateo Arcilla to instruct him to plead guilty, but they desisted from their purpose on

reflecting that such a letter might prejudice Valdez. Of
524 course Valdez denied having given such instructions to Braulia Arcilla, but there can be no doubt that it is she, and not Valdez, who told the truth in this — case any sufficient reason to reject the testimony of Gatmaitan, Arcilla and Figueroa, the court is of the opinion that this testimony is in all respects worthy of credence. They were not friends, relatives nor employees of the deceased, neither did they owe favors to him or to his family. They are not enemies of the defendants and have not been paid for testifying against them. It has already been said that Arcilla was an old tenant of the Valdez family. They had no favors or benefits to expect by testifying against Valdez; on the contrary, by telling the truth they have prejudiced and incriminated themselves.

“A good deal of talent is required to invent a drama such as these witnesses have related, the denouement of which was the murder of Yuson; and for such witless persons to have been able to reproduce that drama here by narration we are forced to admit that they did in fact act the very role which each of them attributed to himself.

“Their testimony is attacked as being unlikely and suspicious, but nevertheless it is strongly corroborated by the evidence of record. The promise of money, mentioned by Gatmaitan as made to him by Valdez, is confirmed by Arcilla, to whom a like promise was made. Valdez' letter, which Arcilla testified he delivered to Amante, instructing the latter to bring his shotgun to the pueblo, was seen and read by Victor Robaya, a disinterested and impartial witness in this case. The delivery of the shotgun by Valdez to Gatmaitan was witnessed by Arcilla. At the corner of the street near Yuson's house, Tomás Diego, who is also an absolutely impartial witness in this case, first saw Valdez alone and a moment later saw him accompanied by another man, who must have been Gatmaitan. The notice of the arrival of Yuson, which Gatmaitan said was given by Figueroa to Valdez and Gatmaitan, is confirmed by Figueroa, who

also confirmed the fact of his having been offered money by Valdez to watch Yuson's movements. These three witnesses spoke of words addressed to Yuson by his wife, when she told him to enter the door of the zaguan; they alluded to the shouts of the servants of the house in giving the alarm and announcing the misfortune that had befallen their master; and, finally, they mentioned the shots discharged from a firearm. All these particulars are corroborated by the testimony of the widow and the other residents of the place, including the witnesses of the defense themselves with regard to the shots. The details of the place or scene of the crime, as described by these witnesses, were verified by the inspection there made by Captain Crockett. If these witnesses had not been in the yard on the night of the occurrence, it would be impossible to explain how they could have given those details. There is no evidence that they were ever in the said yard either before or after the crime. It is presumed that they were not acquainted with the yard, because they were farm laborers living out in the rice fields and because the lot in question was enclosed by a fence.

"In order to determine the weight that should be given to the testimony of these three witnesses, that of any particular one should not be analyzed or examined apart from that of the others, as has been done by the defense. Both logic and sound judgment require that the testimony should be considered as a whole, and we must seek the intimate relation which exists between that of one and the other, without ever losing sight of the support furnished such testimony by other sources. By any other method of examination, no witness, either of the prosecution or of the defense, could be deemed to be truthful, nor could the testimony of any witness be considered conclusive. With respect to the disagreements found in details of scant importance—granted that such disagreements appear in the evidence—they ought not to obscure nor cast doubt on the substantial or essential features of the facts. On the contrary, it should be borne in mind that discrepancies in testimony allay the suspicion of any conspiracy or collusion. If the principal facts are fully proven, the lack of a satisfactory explanation of a minor detail, should there be such in the evidence of the prosecution, can not support a reasonable doubt.

"The motives for the crime, as shown by the prosecution, were two actions which the deceased, Eusebio Yuson, successively maintained against the family of Emilio Valdez, concerning the survey of the lands in the barrio of Santo Cristo, Gapan, and an easement of water on these lands. Although both suits were settled by compromise between the litigants, it is a fact that after the adjustment the friendly relations that had previously united them became notoriously strained to the extent that the Valdez family ceased to visit the house of Yuson and refused to greet the latter or to speak to him on the streets and other parts of the pueblo. Attorney Santos, as a good witness and relative of Valdez, testified that the adjustment referred to was satisfactory to both litigants and that after that adjustment Yuson and Valdez met each other one day in the cockpit, shook hands there, talked

with one another and sat down together. That which Mr. Santos relates may have occurred once, does not mean that the old friendly relations, interrupted by the suits, had been renewed, neither does it preclude what the witnesses for the prosecution testified, to wit, that the two families in question refused to greet and talk to each other in the street, and that the visits between the Valdez and the Yuson families had not been resumed. The proof that neither Valdez nor any member of his family attended Yuson's funeral is very significant, since the deceased was prominent man of his pueblo and had met with a violent death. One can never foretell the consequences of a disagreement or enmity until such consequences are seen. It would seem that a disagreement of three years' standing could not give rise to so atrocious a crime as the murder of Yuson; but after that murder was committed by Valdez, it would be improper to assign the motive to any other cause than his previous enmity toward the deceased. The widow Perfecta de Guzman testified that the defendants Valdez and Amante were very envious of her husband because he was very active and industrious and prospered in the pursuit of his occupation of agriculturist. If this is so, as it must be, because the widow was not contradicted on this point, it is easy to understand how the old animosity of Valdez and Amante toward Yuson must have revived at the time of last year's harvest on their seeing that their enemy, Yuson, succeeded better than they, perhaps favored by that irrigation ditch which was the subject-matter of the aforementioned legal proceedings. Envy has not been less prolific in crimes than hatred. Aside from this, the witness Rufino Alacon spoke of a certain threat which Valdez and Amante, while in the irrigation ditch referred to, proffered against Yuson, saying that 'his day would surely come.' This threat was not denied by Valdez, nor does the record show that he afterwards withdrew it.

527 "The evidence of the prosecution, in so far as it concerns the defendant Francisco Amante, is not, in the judgment of the court, sufficient to establish his guilt nor his participation in the crime. Although it was proven that Amante was at outs with Yuson and that the said Amante, after receiving the letter from his brother-in-law, Valdez, went to the latter's house to deliver the shotgun to him, yet evidence is still wanting to show that Amante knew for what use Valdez needed the weapon and that Amante consented to that use. Both of these points may be presumed, taking into account the relationship between Amante and Valdez and the fact that they were both at outs with the deceased. Such a presumption may also be drawn from the fact of Amante's having taken the shotgun to Valdez, at night, and directing Arcilla to keep silence in the matter; but against such presumptions we have the stronger one of this defendant's innocence. Moreover, Amante testified as a witness in his own behalf and denied knowing that Valdez would use or intended to use the shotgun to commit any crime. Clear and positive proof, and not mere presumptions or conjectures, is required to convict an accused.

"For all the foregoing reasons, the court pronounces judgment

and freely acquits the defendant Francisco Amante, for insufficiency of evidence, with one-half of the costs de oficio, and his immediate release is ordered; the other defendant, Emilio Valdez, is found to be guilty, beyond reasonable doubt, of the murder charged against him in the complaint. The said Emilio Valdez is therefore sentenced to the penalty of death, to indemnify the family of the deceased in the sum of P2,000, and to pay the other half of the costs. For the review of this judgment in so far as it refers to Emilio Valdez, let the record of this original case, together with all the testimony and evidence taken, be forwarded in consultation to the Honorable Supreme Court of the Philippine Islands whether or not this judgment is appealed from — the said Valdez

It is so ordered.

528 "Given in San Isidro, Nueva Ecija, this 16th day of July, 1912.
(Sgd.)

ISIDRO PAREDES,
Acting Judge, 4th Judicial District."

Upon arraignment at his own trial Gatmaitan made the following statement:

"I do not deny that I should be punished, but I cannot admit that it was I who fired, but that it was he (referring to Valdez)."

But later he went on the witness-stand in his own behalf, repudiated all his testimony in the former case, denied all knowledge of the commission of the crime, attempted to set up an alibi, and swore that he had been induced to testify falsely in the former case, partly by the use of force and threats by Capt. Crockett, Lieut. Steffee, and other officers and soldiers of the Constabulary in whose hands he had been held prisoner; and partly by the suggestions of Arcilla and Figueroa who, like himself, were held for some considerable time in arrest under charges of guilty complicity in the commission of the crime.

We agree with the trial judge that his testimony in his own behalf is wholly unworthy of credit. The contradictory and highly unsatisfactory explanations given by him of his motives for testifying against Valdez at the former trial are so incoherent, irrational, and incredible as to cast a doubt upon the truth of all that

529 he said while testifying on his own behalf; and the testimony of the witnesses called in rebuttal conclusively establishes the falsity of every material statement made by him on that occasion.

From the testimony of Lieut. Steffee and of the Constabulary guards, who were on duty at the Cabanatuan Cuartel from May 23rd, when Gatmaitan was arrested, until May 28th, when he made his extra-judicial confession implicating Valdez, it is clear that the three accomplices, while all detained in the same barracks, were confined in widely separated cells, and that the guards had strict orders not to allow them to communicate with each other.

Gatmaitan's statements as to the torture inflicted upon him by the junior officers and soldiers of the Constabulary in order to induce him to confess and to implicate Valdez are positively con-

tradicted by those officers and men, and not the slightest reason has been suggested for a concerted attempt on their part to induce him to implicate Valdez at that time. We are not unaware of the possibility that police officers and soldiers, in an excess of zeal, may and sometimes do maltreat prisoners to induce them to confess or to testify against others. But the testimony of the witnesses called in rebuttal is so definite and convincing in this regard that there is no reason to question or to doubt it, especially as there is nothing in either record which even suggests the possibility that at
530 that time the officers or men of the Constabulary had any possible interest in procuring the arrest and conviction of Valdez. Furthermore, the falsity of these charges made by Gatmaitan against his guards is clearly established by the testimony of Colonel Mair of the Constabulary. That officer, who had no connection whatever with the conduct of the case and no duties which could give him any special interest in the affairs of the locality, visited Cabanatuan in the performance of his duties as Commanding Officer of the Constabulary of the District. While in Cabanatuan he made a personal investigation of the proceedings which had resulted in the arrest of Gatmaitan and others, and their detention in the Constabulary barracks pending the preliminary trial in the court of the justice of the peace. He says that at that time Gatmaitan made no complaint of mistreatment by his guards, although, like the other prisoners, he had an opportunity to do so if he desired; and that on being told by Colonel Mair that he might have him transferred for detention to Bilibid, he replied that he would prefer to remain in Cabanatuan.

It must be clear that if his Constabulary guards at Cabanatuan were subjecting him to such cruelty and torture as to induce him to confess to his own guilt of a capital offense of which he was innocent, he would not have declined the opportunity to escape from their hands, and to accept a transfer to Bilibid.

At the trial of Valdez, Gatmaitan was fully advised by counsel as to his rights, in open court, and under such conditions that
531 it is difficult if not impossible to believe that his repetition of the story of the commission of the crime, on the witness-stand and under the protection of the court, was induced by cruelty or fear of cruelty or maltreatment at the hands of the Constabulary.

At his own trial Gatmaitan attempted to establish an alibi by the testimony of a man named Mamerto Aquino (a cousin of Valdez and Gatmaitan's employer). Aquino's wife and some three or four laborers, who testified that on the night of the murder, Gatmaitan was present in Aquino's house, where a game of monte was in progress. The testimony of none of these witnesses is satisfactory, definite or convincing, and Gatmaitan himself positively contradicts Aquino in some important details. Gatmaitan swore that he left Aquino's house at eight o'clock in the evening, and that at that time several of the gamblers were still playing. Aquino, who was Gatmaitan's employer, swore that Gatmaitan did not leave the house until after ten o'clock, and then only to comply with an order regarding some work which he was directed to do. We are satisfied

that the evidence *replied* upon in support of this alibi was fabricated for the purposes of the defense in the Gatmaitan trial, and is wholly unworthy of credence. It would indeed be passing strange, if this evidence were true, that it was not developed at or before the trial of Valdez, Aquino's cousin, which took place before the trial of Gatmaitan, and which must have stirred the interest not merely
 532 of the friends and relations of Valdez, but of the whole community.

At the trial of Gatmaitan, as we have already indicated, several witnesses were called in a direct attempt to fix responsibility for the murder upon Cándido García, a nephew of deceased. These witnesses were not called at the trial of Valdez, but we are asked to have in mind the possibility of the guilt of García in adjudicating the merits of both appeals. With the observation, in passing, that the prosecution in the Gatmaitan case submitted what we regard as conclusive evidence of the falsity of the testimony of these witnesses, we postpone consideration of the contentions as to the possible guilt of García, to its proper place in the general review of the arguments of counsel for the defense.

Aside from the repudiation by Gatmaitan of his testimony in the Valdez case; the testimony in support of the alibi set up by Gatmaitan in his own defense; and the evidence seeking to connect García with the commission of the crime, to which reference has just been made; there is no material evidence in the record of the case against Gatmaitan which develops or tends to develop any new facts not disclosed by the evidence in the Valdez case and discussed in the opinion of Judge Paredes above set out at length.

After repeated exhaustive and painstaking examinations of all the evidence in both records, a majority of the court is convinced
 533 beyond a reasonable doubt of the guilt of both the appellants.

Both of the accused were defended by able and experienced counsel in this Court as well as in the court below. Extended oral arguments and briefs, aggregating some hundreds of pages in length, have been submitted in the course of these proceedings, and we are convinced that nothing which could be brought forward on behalf of the accused has been neglected, and that we have been compelled by their counsel to consider and pass upon every possible argument which could be advanced in support of a claim of reasonable doubt as to their guilt. We cannot undertake to discuss every contention which has been put forward by the defense throughout the course of these proceedings. That would be impracticable and is unnecessary. It must suffice to say in regard to all the contentions of counsel for the defense not specifically dealt with herein, or conclusively controverted in the briefs filed by the Attorney-General, that they have been maturely considered and ruled upon adversely after due deliberation, and with full recognition of the right of the accused to the benefit of every reasonable doubt.

Counsel for Valdez lay great stress on the fact that the three principal witnesses for the prosecution were self-confessed accomplices, densely ignorant men, of whom one, Gatmaitan, is a convicted cattle-

534 thief, and another Mateo Arcilla, is a convicted wife-murderer, sentenced to life imprisonment for that crime since he appeared as a witness at the trial of Valdez. This Court, however, while holding that the testimony of accomplices, coming as it does from a polluted source, must always be received with caution and subjected to the most painstaking scrutiny, has repeatedly held also that such testimony is competent and admissible; and that if it appears to be worthy of credence, it is sufficient to sustain a judgment of conviction, even when uncorroborated, but especially when corroborated in important details. (5 Phil. Rep., 339; 9 Phil. Rep., 246; 16 Phil. Rep., 419; U. S. vs. Callapag, 21 Phil. Rep., 262.) In the cases at bar the testimony of the accomplices is strongly corroborated in many important details by the unimpeached evidence in the record, and we accept it as true not because of any inherent probability that these witnesses would tell the truth when called to testify under oath, but rather because of the inherent impossibility that they could have been testifying falsely when they told their story of the commission of the crime at the trial of Valdez, under conditions which could not have failed to develop its weakness had it been concocted by them or by others for the purpose of implicating him.

Two separate judges saw and heard these witnesses testify at the separate trials in the court below, and notwithstanding the searching and insistent cross-examination to which they were subjected 535 by able counsel, both judges were convinced beyond a reasonable doubt of the truth of their account of the commission of the crime as hereinbefore set out.

Much has been said as to alleged contradictions, inconsistencies and inherent improbabilities in the story of the commission of the crime as given by these witnesses on the various occasions upon which they were called upon to tell what they knew in regard to it. Most if not all of these alleged defects in their testimony have been satisfactorily disposed of in the briefs of the Attorney-General, and we shall not therefore stop to examine them in detail. We may say, however, that except in so far as the testimony of each of these witnesses discloses an apparent effort to minimize his own guilty participation in the crime, their separate accounts of the various transactions connected with it appear to us to be consistent and convincing to a degree, and to contain only such minor discrepancies as must always be expected in the testimony of witnesses who are endeavoring to give an account of a series of incidents from the recollection of the impression made upon them at the time when they occurred.

Counsel for appellants lay great stress on the fact that when Figueroa was first arrested he did not implicate Valdez in his original statement to the police; but we think that the explanation given by him on the witness-stand for his failure to mention the name of Valdez at that time is sufficient, viewing the matter from his 536 standpoint, to account for if not to justify his action in this regard. Valdez had not then been arrested, and Figueroa consulted both his hopes for aid and assistance and his fears of possible vengeance or abandonment in adopting at that time a policy of silence as to Valdez' connection with the crime. An active factional

and political leader, a member of a rich and influential family, Valdez so long as he was at liberty was a possible friend and protector to be courted, and a potential enemy to be feared.

What was said with reference to the original statement made by Figueroa is equally applicable in explanation of the manifest reticence displayed by Gatmaitan and Arcilla in their original statements to the police with reference to the part taken by Valdez in the commission of the crime.

We do not for one moment believe that the admissions and confessions of these informers were the result of a guilty conscience compelling them, when stricken by remorse, to speak the truth. Their confessions made to the police and their testimony given at the trial were all manifestly inspired by the hope that by telling what they knew of the crime they might save their own necks. Throughout the whole proceedings, from the time of their arrest down to the close of the Valdez trial, they evidently believed that they could
 537 not hope to conceal the fact that they had some guilty connection with the crime. Ignorant and stupid creatures that they were, they did not, at the outset, tell all they knew, and each of them endeavored, so far as he was able, to minimize his own criminal responsibility for the part taken by him. Even at the trial their testimony was doubtless influenced in some degree by this desire to minimize their own guilty participation in the commission of the crime.

The result of this effort by each of these witnesses to minimize as far as possible his own guilty participation in the crime is made manifest in certain contradictions and inconsistencies in their testimony discussed in the briefs of counsel, especially when read in connection with their admissions and confessions to the police. But, as we have said already, these defects in their testimony are not such as to put in doubt the material facts testified to by them which establish the guilt of Valdez and Gatmaitan beyond a reasonable doubt.

Counsel for the defense attack the case for the prosecution on the ground of the inherent improbability that a man of Valdez' intelligence and position, if he resolved to slay his enemy, would use such tools, and thus expose himself to the risk of betrayal, rather than take the life of his victim with his own hand. To this it may be answered that experience, especially in these Islands, has taught us
 538 that many men appear to have the mistaken belief that there is not the same degree of criminality in the commission of crimes of violence through others, as there is in the commission of the same crime with one's own hands; so that they will go to great lengths of inconvenience, expense and even risk to induce others to commit deeds of violence which they hesitate to commit themselves. Our records contain so many instances of the commission of crimes of this character "by inducement" that we are not impressed by the alleged inherent improbability in this regard of the evidence implicating Valdez. And if he once resolved to call on others to do his victim to death, instead of slaying him with his own hand, the criminal record of two of these self-

confessed accomplices, and the dependent relation of the third, accounts very well for his choice of tools.

Much is said by counsel as to the failure of the prosecution to establish the existence of any sufficient motive which could have lead Valdez to procure the murder of his fellow townsman.

We have frequently held, however, that while the prosecution should always prove the existence of a sufficient motive actuating the defendant in a criminal case, if that be possible; nevertheless, a judgment of conviction may be maintained, even in a capital case, without proof as to motive, where the commission by the accused of the acts constituting the crime is proven beyond a reasonable doubt.

539 In the case at bar, while it is true that the evidence does not definitely establish the existence of a motive which would satisfactorily account for the planning and execution of the murder by Valdez at the precise time when it was committed, there is abundant proof of the existence of a long standing grudge in the heart of Valdez against the deceased, and of a bitter quarrel between them and their respective families. The quarrel seems to have had its origin in differences which arose between Valdez and the deceased over boundary lines between their property and in disputes as to water rights in an irrigating ditch running close by. The flow of water had been diverted on several occasions by one party to the quarrel or the other, and lawsuits were threatened, though the matter seems to have ended in a settlement outside of court and the surrender by Valdez of his claims to the water and land in dispute. But all this occurred some two or three years before the murder, and counsel insist that no sufficient motive for a cold-blooded murder is to be found in these petty differences which had been settled long before the crime was committed. It is a matter of common knowledge, however, that disputes between neighbors over boundary lines and water rights often engender quarrels out of all proportion to the value of the disputed property, and certain it is that the family feud engendered by the disputes between Valdez

540 and the deceased was so bitter, that neither Valdez nor his mother felt called upon to visit the family of the deceased after the murder, nor to attend the funeral, nor have they offered any reasonable explanation of their failure to pay the ordinary courtesies which might well be expected on such an occasion from neighbors and fellow townsmen in a provincial town in the Philippines.

In addition to the personal grudge entertained against the deceased by Valdez, it would appear that there may have been some additional cause of enmity engendered by the heat of a political campaign in which Valdez took an active part just prior to the date of the murder. The evidence discloses that Valdez was an active leader of a political faction opposed to the party which at that time furnished the municipal officers, one of whom was a nephew of the deceased.

We may never know with certainty what was the immediate moving cause which finally induced Valdez to plan the death of his

adversary, although Gatmaitain testified that Valdez said that he wanted him killed on account of the old disputes over boundary and water rights; but there can be no doubt that the personal, social and political relations between the parties were such, that either because of the old grudge or because of some new and unknown cause of offense arising out of these strained relations, Valdez resolved to rid himself, once and for all, of his hated enemy, by having him done to death in the form and manner set forth in the information.

541 We come now to consider the claim of a reasonable doubt as to the guilt of Valdez, based on the alleged possibility that the murder may have been committed by Candido García, a nephew of the deceased, as disclosed by the evidence adduced during the Gatmaitain trial.

This nephew lived with his father, Florentino García, in a house just west of the Yuson residence. Between the two houses was a small nipa shack in which lived a grasseutter employed by Yuson.

Called at the Valdez trial to account for the fact that four shots were fired on the night of the murder, three of these shots in quite rapid succession a short interval after the first shot was heard, this nephew, Cándido García, testified that he, with his brother Fernando García and several other members of his father's family were talking in their own house, when they heard the report of the discharge of a gun in the direction of their uncle's house; that very soon afterwards they heard the voice of their aunt calling to Cándido and Fernando for help; that believing that their uncle's house had been attacked by ladrones, and in order to summon the help of the neighbors and the police, he seized the gun and fired it three times from the window, loudly calling for ehlp between each discharge; that things having quieted down, he with the other members of his family went over to the house of their uncle and took part in

542 the investigations being made there as to the murder and the incidents leading up to it.

Counsel for the defense suggest that this young man may have been the guilty party who fired the fatal shot underneath the tree at the bottom of the stairs of the Yuson residence, and that he then hurried back to his own home and fired the gun three times from the window of his own house as a blind.

We are of the opinion that the records of both cases abound with conclusive proof not merely that there is no reasonable ground to suspect this young man of the commission of the crime, but that he is absolutely innocent; and we are satisfied that the attempt to turn the finger of suspicion upon him is no more than a desperate effort to raise a doubt as to the guilt of the real criminal, unsupported by any evidence worthy the name and in direct conflict with all the credible evidence adduced at either trial.

It is hinted that he may have been actuated by a desire to share in the inheritance of his uncle. The deceased was survived by his widow, a natural child, and a number of nephews and nieces. The record does not disclose how many heirs shared in the estate, but it is clear that there were a considerable number. And there is not

a particle of evidence in the record tending to disclose any reason why this young man should seek the death of his uncle in order to share in his estate other than the mere fact that he is one of
543 a number of heirs, any one of whom would appear to have had an equal interest in the death of the murdered man.

One witness presented himself at the Gatmaitan trial to say that he heard the deceased reprimand his nephew quite severely for some alleged misconduct, not long before the murder. But even if the unsatisfactory testimony of this witness were accepted as true, it would require some stretch of the imagination to find in that incident a sufficient motive for the commission of the crime. We do not deny, of course, that deeds of violence have been actuated at times by motives apparently no stronger than those attributed by the defense to the nephew of the murdered man, but we do assert that the fact that he is one of the heirs of the deceased, and the alleged fact that he had been reprimanded by his uncle some weeks before the murder furnish no ground for suspecting him of the crime, in the absence of other credible evidence as to his guilt.

The transcript of his testimony in both cases indicates that he is a young man of rather more than the average intelligence and good sense, and yet counsel charge him with conduct which could only be accounted for by attributing to him the crassest stupidity or the most child-like simple-mindedness. They would have us believe that having lain in wait for his uncle on a quiet Sunday evening and having
544 shot him in the back, he ran back in the dark across the vacant space between the two houses, and on reaching his father's house fired three shots in rapid succession. To what end? For what conceivable purpose? "As a blind," we are told, and yet no reasonable explanation for such conduct has been offered, nor can it be reasonably conceived how such conduct could serve "as a blind." On the contrary, it could only serve to direct and invite attention to the man who fired these shots, and subject his actions to such inquiry and investigation as no guilty man in his right senses would willingly invite.

On the other hand, the explanation given by the young man of the firing of these shots is altogether reasonable and consistent with the conditions as they must have appeared to him at the time. With his aunt calling upon him and his brother for help, crying out that her husband had been killed by evil-doers (*malhechores*) and *ladrones*, it was no unnatural impulse on his part to discharge his gun several times before exposing himself to unknown enemies in unknown numbers, in the hope of either driving them off or of calling in the aid of the police. We have read with care the extended examinations and reexaminations to which the young man and his brother were subjected in the court below, and we have been unable to detect the slightest indication of insincerity, evasiveness or reserve in their testimony. The account of what occurred as given by them
545 has all the earmarks of truth, save except that there appears to be some difference between the brothers as to which of them first seized the gun from the wall where it hung and loaded it, their testimony is clear and consistent, carrying with it a firm con-

viction of its truth. As to the apparent contradiction in the testimony of the brothers as to which of them first seized it and took it from its place on the wall, we can only assume that one or other of them had forgotten just what did take place in the confusion and the first excitement of the moment after they heard the shot which killed their uncle and the cries of their aunt for help.

Counsel ridicule the conduct of the young man Cándido García in firing these shots from the window of his house instead of rushing to the aid of his aunt; but, in the darkness, with the knowledge that his uncle had just been killed, with his aunt's outcries indicating that ladrones were in the yard separating the two houses, with no knowledge as to the numbers of the evil-doers, and surrounded by his terrified sisters and brothers, it is easy to understand why he failed to follow the course suggested for him by counsel, speaking after the event and with full knowledge of the true conditions as they actually existed.

We are confirmed in our belief that there was nothing unreasonable or suspicious in his conduct, under all the circumstances which surrounded him, by the fact that, although his conduct was
546 such as to draw marked attention to him in connection with the tragedy, his explanation seems to have been accepted as reasonable and satisfactory by his townsmen and the officials who investigated the affair, with full knowledge of local conditions and of the relations existing between the parties. Indeed no breath of suspicion seems to have been directed against him, not even by Valdez himself, until after the trial in the Valdez case had terminated, and counsel in their arguments were driven in desperation to look for a ground upon which to rest a claim of "reasonable doubt," in the possibility that the crime might have been committed by some other person than Valdez and his accomplices.

After the conviction of Valdez it must have been apparent that his case was hopeless unless some affirmative evidence could be discovered which would cast suspicion on some one else and thus cast a doubt on the judgment of conviction in his case. Witnesses were not lacking at the trial of Gatmaitan, which took place some time after the Valdez trial, whose testimony, if it could be accepted as the truth, would leave no doubt as to the guilty of young García.

The chief of these witnesses was Agapita Flora, whose husband, at the time of Yuson's murder, was employed by him as a grass cutter and lived in the little house in the lot separating the Yuson and García residences. This woman testified at the Gatmaitan trial, that she was lighting a fire to do some cooking in her house
547 at the moment when she heard the first shot on the night of the murder; that she had just started to go up to the Yuson house to learn what was the matter when she met Cándido García carrying his gun; that he tapped her on the shoulder saying "You beware," and then went rapidly on toward his own house. She further testified on cross-examination that she had left the service of the Yuson family, because the widow would not furnish her husband and herself with enough rice to support them; that since that time she had been in the service of Señora Reyes, the mother of Valdez; that

the debts of her husband had been paid, though the testimony does not disclose by whom they were paid; that she had been questioned by no one on the night of the murder; and that she told no one of the meeting with Cándido García immediately after the murder until she told the party who had paid her husband's debts.

García testified that the provincial governor held an investigation at the Yuson house between 10 and 12 o'clock on the night of the murder, and that, pointing to the house where this woman lived, he asked who lived there; that on being informed that it was Yuson's grass-cutter and his wife, he directed that they be brought before him; that at the request of the widow, Cándido himself went for them and found the woman alone in the house, and asleep; that he brought her before the governor, who questioned her with regard to the crime; and that she then said that at the time when she heard the first shot she was down at the river assisting her husband in
548 washing grass.

Cándido's testimony in this connection is corroborated by the testimony of the municipal president, who was present and took part in the investigation; by the widow; and, in a general way, by the provincial governor himself.

Both the municipal president and the governor testified that they had interrogated the husband of this woman on the following day, and that he had informed them that at the time the first shot was fired he and his wife were at the river washing grass.

We are satisfied that this woman's testimony at the Gatmaitan trial was manufactured out of the whole cloth. Aside from the testimony of unimpeached and disinterested witnesses demonstrating its utter unreliability, its absurdity is apparent on its face. If Cándido García committed the crime, and was capable thereafter of organizing and maintaining the conspiracy which it is charged has for its object the unjust conviction of Valdez of that crime, is it reasonable to believe that this wretched woman, the only direct witness of whom he needed to have any fear, would have been permitted to leave the employ of his aunt and go into the employ of Valdez' mother, for lack of sufficient rice to support herself and her husband? Is it conceivable that conscious of his guilt, and of the damning evidence which this woman could give against him, he would never
549 have said a word, or taken any steps, after he passed her on the way from the murder, to secure her silence? Would this woman have kept silent as she claims she did, and, although she knew that her husband's master had been killed by his nephew, allow herself to be driven from the widow's employ? How was her silence secured through all the preliminary proceedings which lead up to the trial of Valdez, and throughout the trial itself? From whatever point of view her testimony is examined, its inherent weakness and its manifest falsity is glaringly apparent.

Pascuala Parungao and Juan Parungao, brother and sister, and near neighbors of the Yuson's, testified at the Gatmaitan trial that on hearing the first shot they looked out of their respective houses and saw a man running toward the García house. But how was it that this vital testimony was not discovered during the investigation

on the night of the murder by the provincial governor and the municipal president, or during the preliminary investigation by the police before the Valdez trial or in the course of that trial? Why was it only forthcoming at the Gatmaitan trial, when the need for just such corroborative evidence as to the truth of the story told by the perjured old woman became apparent?

María Velilla testified that she was in the Yuson residence on the night of the murder and heard the widow say:

"Madre mía, aún no está enterrado me dán Ustedes ya penas?"

550 And this witness further testified as follows:

"He oído de la conversación de ellos, por qué ocurrió esto y por qué le mataron a esta persona: después de esa conversación de ellos yo lo que hice era marcharme."

The confused and unsatisfactory statements of this witness appear to have been intended to show that on the very night of the murder Yuson's wife and family were aware of Cándido's guilt, a charge which is out of the bounds of all reason in view of the history of the whole proceedings as developed in the record.

Another witness at the Gatmaitan trial testified that the widow had offered him P50 to testify that Mateo Arcilla had delivered the shotgun to Valdez, which would tend to show, as the Attorney-General justly observes, that the widow was trying to bribe a witness to testify for the prosecution contrary to the testimony of the other witnesses for the prosecution. Needless to say this testimony was flatly contradicted and denied by the widow herself.

There is nothing in the testimony of all these witnesses which raises any doubt in our minds as to the innocence of Cándido García.

But our confident assurance as to the innocence of this young man is not derived merely from the inherent weakness and manifest falsity of the testimony submitted by the defense for the purpose of

551 directing the finger of suspicion toward him. It is based also, and more especially upon the irreconcilable incompatibility of the contention as to the possibility of his guilt with the undisputed facts developed in the course of the trials of Valdéz and Gatmaitan.

In the first place it is very manifest that if García lay in wait for his uncle and shot him with his father's gun, the story told by Gatmaitan, Figueroa and Arcilla as to their participation in the commission of the crime is wholly and absolutely false. And yet, whatever may be said as to the probative value of the testimony of these men in so far as it affects Valdez, we think that their testimony, taken by itself, leaves no room for doubt as to the fact that they themselves were guilty participants in the murder. If human testimony can ever be given a conclusive probative value in a criminal case, we think that the records of the two cases under review establishes beyond the reasonable possibility of error that Gatmaitan, Figueroa and Arcilla shared in a greater or less degree in the commission of the crime.

But let us assume that we are mistaken in this regard; that Gatmaitan, Figueroa and Arcilla had no part in the commission of the crime; that their testimony at the Valdez trial and their extra-judicial admissions and confessions were false, and the outcome of a con-

552 spiracy to convict Valdez; that young Cándido García fired the fatal shot, ran back across the lot to his father's house and there fired three more shots "as a blind" and then went to the house of the murdered man and joined in the investigations; and having made these assumptions in deference to the contentions of counsel for the defense, let us consider some of the conclusions which, in the light of the record before us, must be drawn therefrom.

If Cándido García fired the fatal shot, he did so under conditions which would render the discovery of his guilt and his conviction of the crime highly improbable, unless some member of his immediate family should betray him. A considerable time elapsed after the murder before any arrests were made by the police, and, apparently, before any clue leading to their arrest was discovered. And yet we are asked to believe that, not content with escaping suspicion and arrest, he, or some one else acting with him, resolved to procure the arrest and conviction of Valdez, one of the prominent citizens of the town in which he lived, a recognized leader of an active political faction, and a member of one of the richest, most powerful and influential families in the community. That to this end he procured the arrest of three ignorant men, and induced them, after their arrest, falsely to admit their guilty complicity in the murder and to make sworn confessions in which they not only charged Valdez with hav-

553 ing instigated the crime, but admitted in detail a degree of participation in the commission of the crime which might well lead to their execution on the gallows, and certainly exposed them to the risk of imprisonment for life or a long term of years. That he induced them to adhere to the substance of these wholly false and imaginary accounts of their participation in the crime, through thick and thin; and finally to go on the witness-stand during the trial of Valdez, and repeat these stories, separately and apart, under fire of the most rigorous cross-examination by able counsel, and after full warning in the presence of the court of the consequences to themselves which might well result from their testimony.

But more than this, after Gatmaitan himself *and* been brought to trial; after García had gone on the witness-stand on behalf of the prosecution; after it was manifest that if García had employed and induced Gatmaitan falsely to confess, and falsely to implicate Valdez, he had desecrated him and was willing to let him be hanged on his own perjured testimony; and after Gatmaitan had repudiated his testimony at the Valdez trial; counsel for the defense would have us believe that this young man was able to close Gatmaitan's mouth and prevent him from betraying the real murderer, who had employed or induced him to testify falsely against Valdez and in doing so to implicate himself. Can it be doubted that with all the resources

554 at the command of the Valdez family, the skilled attorneys who appeared for Gatmaitan, would have found means to develop and to prove the guilty connection of García with the alleged conspiracy to procure false witnesses to testify against Valdez and to implicate Gatmaitan, had it been true that young García or any one else for him had set the conspiracy on foot, and had Gatmaitan seen fit to betray his employer. But Gatmaitan said not a

word, and to this day has said not a word which points, even remotely, to a conspiracy set on foot by this young man to procure false testimony at the Valdez trial or to his guilty complicity in the commission of the crime. He contended himself with a confused and incredible story of cruelty inflicted by Captain Crockett, Lieut. Steffee and other Constabulary officers and soldiers to induce him to confess his guilt and to implicate Valdez, and of pressure brought to bear on him to the same end by his ignorant and besotted fellow prisoners, Arcilla and Figueroa.

With what marvelous power is this young man endowed, to enable him, after deserting and abandoning his ignorant tool, to follow Gatmaitan throughout the course of his trial *nad* even into the cell where he awaits our action on the judgment on conviction entered in the court below, and close his mouth as to his (García's) connection with the crime and the conspiracy to Valdez?

The same power to close the mouth of his tools, if they were
 555 his tools, must have been exercised in regard to Arcilla under not less extraordinary circumstances. This wretched creature has been convicted and sentenced to life imprisonment for wife murder since the date of the Valdez trial. In this Court, a motion for a new trial, which of course must be denied, has been submitted, supported by an affidavit made by Arcilla in his prison cell, in which he retracts most of his testimony given at the Valdez trial, and declares that he was induced to testify falsely by the Constabulary officers and men while under arrest in Cabanatuan. This sworn retraction of his testimony, does not in the slightest degree shake our belief in the guilt of Valdez, for as we have said before we do not rest our conviction of his guilt on the mere probability that any one of the self-confessed accomplices would tell the truth when called to the witness-stand, but upon the inherent impossibility that they and the other witnesses for the prosecution could have given the account of the commission of the crime as they did without betraying its falsity under the rigid cross-examination to which they were compelled to submit, if it had been false.

But the striking thing in regard to this retraction sworn to by Arcilla, after his conviction and sentence for wife-murder, is that he nowhere intimates that young García or any one else connected with him had anything to do with the conspiracy to procure the false testimony at the trial of Valdez. Is it possible that under all the
 556 circumstances, Gatmaitan and Arcilla would still keep silent as to the true instigators of the conspiracy, if indeed their testimony was given in pursuance of such a conspiracy?

It may be suggested that perhaps these two knew nothing of the party or parties who organized the conspiracy, and that they told the truth when they said that they had been forced to testify as they did by the Constabulary officers and men. But this explanation leads to even more improbable and incredible conclusions than that of their self-enforced silence under such extraordinary circumstances. If it were well founded, we would have to believe that in addition to a number of other impossible feats performed by young García which we shall refer to hereafter, he actually in-

duced two American Constabulary officers and a number of their men to join him in a deliberate attempt to procure his escape from the consequences of his crime, and by force, threats and cruelty to induce three wholly innocent men to convict themselves as well as Valdez by the repetition of a carefully prepared tissue of lies on the witness-stand with that end in view.

But the absolute conviction that the account given by the accomplices of the commission of the crime was not a pure invention put in their mouths by Garcia, or some one else for him, does not rest merely on the inherent improbability that he could have induced them to tell such a story, and keep quiet as to his connection with the conspiracy to destroy Valdez. We are
557 firmly convinced that it was an absolute impossibility that he, or any one else, could have invented the story told by these witnesses, and corroborated by other witnesses, and after having invented it, that he could have instructed and prepared the ignorant men who told it in open court, so that they would not have involved themselves in hopeless contradictions under the cross-examination of able counsel to which they were compelled to submit.

He would have been compelled, in the first place, to have worked out an imaginary plot for the assassination of his uncle, involving these three men and Valdez as actors. The construction of this plot necessitated a precise knowledge of the movements of Valdez, of his brother-in-law Amante, and of one or two other persons connected with the tragedy during the forty-eight hours preceding the crime. It involved a relation by imaginary participants in a series of incidents connected with the borrowing of the gun with which the crime was committed, and the bringing together and location of the various parties to the imaginary drama, to which only a genius could have given an appearance of verisimilitude, even had there been no rigid cross-examination to be undergone by the relators of the story, and had the truth of their statements not been subject to criticism and attack by the production of evidence demonstrating its falsity in any material detail. He would have been

compelled not merely to induce the three self-confessed accomplices falsely to incriminate themselves, but to induce
558 three other witnesses to appear and testify falsely in corroboration of vital portions of the stories told by the principal witnesses. And it was necessary to have the six witnesses whose evidence tended directly to implicate Valdez tell the story prepared for them, so as not to conflict with the testimony of the different witnesses who were called for the purpose of establishing other material facts in relation to the crime charged in the information filed at the trial of Valdez; and so as not to conflict with any material fact which the accused, with all his influence and resources, might be able to establish for the purpose of raising a doubt as to their credibility.

The witnesses who were relied upon to tell this carefully concocted story in open court, were all densely ignorant men, only

one of whom could, with difficulty, read and write. As the trial judge indicates in his opinion, they were all men of the most limited instruction and of a notably low order of intelligence; men who by no possibility could have kept in mind the multitude of details, developed in their testimony, as a mere feat of memory; and who could by no possibility have been prepared to meet successfully the unexpected demands for further and unassisted invention involved in their answers under the rigid cross-examination to which they were subjected.

And yet, the utmost skill of counsel has been unable to
559 discover or develop any material contradiction or inconsistency in their testimony which tends to put in doubt the substantial truth of the story of the commission of the crime as told by them in the Constabulary barracks and in open court, which has not been satisfactorily explained and accounted for in the able brief submitted by the Attorney-General. True, counsel point to certain discrepancies in their statements, and insist that these discrepancies destroy the credibility of their testimony. But, as we have already indicated, these very discrepancies tend rather to prove that their account of the commission of the crime is not a purely imaginary one invented for the purpose of removing suspicion from García and directing it toward Valdez.

As we have said, most of the discrepancies and inconsistencies in the statements of the self-confessed accomplices, are manifestly the result of the natural attempt of each of them to minimize his own guilty participation in the crime. Is it conceivable, if the story of the crime as told by them was a pure invention, prepared for them by some third person, that they could have been taught to shade their testimony so perfectly, by adding just such inconsistencies and discrepancies as might be expected from accomplices trying to tell just enough of the truth to save their own necks? And we may add that an extended analysis of their evidence develops many other delicate shadings indicative of its truth which it is
560 utterly inconceivable that such ignorant men would have been capable of divining, much less reproducing in the course of a hotly contested trial in a court of law.

We are not unaware or forgetful of the fact that ignorant and seemingly stupid men have oftentimes succeeded in giving false testimony in such a way as to deceive the most experienced and astute judges; but under all the circumstances of this case, we are convinced that it was absolutely impossible for these witnesses to have testified as they did, had their testimony been prepared for them beforehand in order to shield García, and falsely to convict Valdez, without the falsity of their testimony having been developed by able counsel backed by all the resources and local interests which Valdez could call to his aid and support.

Our confident refusal to base a reasonable doubt as to the guilt of Valdez and Gatmaitan upon the suggestion that the crime may have been committed by García, and that the evidence for the prosecution in both the Valdez and Gatmaitan cases was procured by him for the purpose of turning suspicion in another direction, is

further confirmed by a consideration of the practical impossibility that he could have induced all those witnesses to enter into such a conspiracy, and that had he done so, some trustworthy evidence would not have developed in the course of one or other of the trials in the court below to overthrow it.

The evidence discloses that Arcilla was a direct dependent of the Valdez family, as also was his sister who testified as to the 561 incriminating messages sent by Valdez to her brother after his arrest; that Gatmaitan was in the employ of a cousin of Valdez; and that Robaya, who testified as to the letter sent by Valdez to his brother-in-law on the night before the commission of the crime, worked on the estate of the Valdez family. How did young García secure their consent to join in the conspiracy against Valdez, and how has he retained their loyalty and secured their silence ever since?

There is no evidence, and indeed there is not even a suggestion in the record that any one of these witnesses had any grievance against Valdez or against any member of his family. Had any one of them entertained any feeling of vengeance toward him which might have lead him willingly to testify falsely against Valdez, the cause for such ill feeling could hardly have remained undisclosed in the record of the two cases before us. And had any or all of them been in such relations with young García or the García family as to justify an inference that they might readily have been induced to join him in a conspiracy against Valdez, that fact also could not have remained a secret, with all the channels of information as to the existence of such relations at the disposal of the Valdez family. We must conclude, therefore, that if these witnesses testified falsely, they were bought with a price, and, under all the circumstances, it is beyond belief that that fact,

562 and the name of the buyer, would not have developed during the course of these proceedings. Furthermore, the evidence offered by the defense for the purpose of implicating García carries with it the manifest suggestion that the widow of the murdered man knew that young García was her husband's slayer; and it is clear from all the evidence that if he fired the fatal shot his brother and sisters, nephews and nieces of the deceased, and indeed all the members of his immediate family were aware of his guilt from the beginning.

Is it conceivable that this young man could have procured the successful co-operation of all these persons in an attempt to relieve himself of suspicion by directing the accusation against Valdez?

Their silence, perhaps he might have counted upon, but it must be remembered that the widow and his brother testified at the trial, and a conspiracy to convict Valdez, if it existed, necessarily involved the instruction of all these possible witnesses so that their testimony, if they should be called to the witness-stand, would serve the common end.

To all these persons whom it was necessary for young García to suborn and instruct, if it be true that he fired the fatal shot, and is responsible for the conspiracy to convict Valdez, we must add the

American officers of Constabulary and their men at the Cabanatuan Barracks, where Gatmaitan, Arcilla and Figueroa were confined. For aside from the direct evidence of Gatmaitan in regard to their alleged use of force, cruelty and threats to make him confess
563 and implicate Valdez, it is clear from all the record that without the consent and active co-operation of these Constabulary officers, the three ignorant men could not well have been instructed to give the account of the commission of the crime in the manner and form in which it appears in their confessions and affidavits made while in arrest, and to adhere to it afterwards upon the witness-stand.

We conclude that from whatever angle the evidence of record be examined, it strongly tends to establish the innocence of this young man, and that examining the record as a whole it is inherently impossible that the crime could have been committed by him, and the testimony for the prosecution suborned for the purpose of relieving him of the suspicion of guilt by directing it towards Valdez.

That the crime was no ordinary one, with robbery or some similar motive for its object is beyond question. That neither Gatmaitan, Arcilla, nor Figueroa had any personal motive for the taking of the life of the deceased is equally apparent. And it is equally apparent that they had no motive of personal vengeance of the like in falsely confessing their guilt and falsely charging Valdez with having induced them to become participants. Their intervention in the tragedy, either as guilty participants or as false witnesses was manifestly bought with a price. Were they guilty participants or false
564 witnesses? We answer, confidently relying upon the evidence of record, that they spoke the truth on the witness-stand, and that they were guilty participants with the man who bought their services. Who paid the price? We answer with equal confidence, and without any reasonable doubt, not García but the defendant and appellant, Valdez.

A motion for a new trial, which must be denied, is pending before this Court on the ground that an inspection of the vicinity where the murder was committed was made by the trial judge, in the absence of the defendant Valdez, who was at the time in the provincial jail. The record clearly discloses that this inspection was made with the consent of counsel for Valdez, and that the trial judge was accompanied to the place where the murder was committed by counsel for both the prosecution and the defense.

Some attempt is made in the affidavits accompanying this motion to show that the trial judge took evidence in the course of this visit of inspection, and that there was an attempt made by some of the bystanders to influence his judgment and his feelings against the accused. A careful examination of these affidavits and the counter-affidavits filed by the appellee satisfies us that nothing more than inspection of the scene of the murder was made by the trial judge, and that no evidence whatever was taken on that occasion; and we
565 are of opinion that under all the circumstances there was no violation of the constitutional right of the prisoner to be confronted with the witnesses. *People v. Thorn*, 156 N. Y., 286,

42 L. R. A., 368, and the cases cited in the extended note in the annotated report.

Perhaps we should add that if any of the bystanders did in fact do or say anything which had for its object the influencing of the mind or feelings of the trial judge, the permission of such apparently unanticipated, unauthorized and perhaps unavoidable intervention by these bystanders was at most error without prejudice, and has had no influence one way of the other in the final disposition of the pending proceedings.

We conclude that the findings of the trial court as to the guilt of both these appellants, Valdez and Gatmaitan, are sustained by the evidence of record beyond a reasonable doubt; and we find no error in either of the records brought here on appeal prejudicial to the rights of the accused.

We are of opinion however that under all the circumstances of the case, the appellant Gatmaitan is not entitled to have his ignorance and lack of instruction taken into consideration as an extenuating circumstance, so as to reduce the degree of the penalty which should be imposed, and that the trial judge erred in so doing.

The judgment entered in case No. 8185 convicting and sentencing to death the defendant and appellant Valdez should therefore
566 be affirmed, with the costs of this instance against him; and the judgment entered in case No. 9021 convicting and sentencing the defendant and appellant Gatmaitan should be modified by striking out therefrom so much thereof as imposes life imprisonment with the subsidiary penalties prescribed by law, and substituting therefor the penalty of death, which we are of opinion should be imposed upon him, and thus modified the judgment entered in the court below should be affirmed, with the costs of this instance against the appellant.

Ten days hereafter let judgment be entered in accordance herewith, and ten days thereafter let the records be returned to the court below for further proceedings in accordance with law.

It is so ordered.

(Sgd.)

A. C. CARSON.

Concur:

(Sgd.) C. S. ARELLANO.

" FLORENTINO TORRES.

" MANUEL ARAULLO.

567 MORELAND, J., dissenting:

I dissent. I think that the least that the accused is entitled to under the facts and the law is a new trial. I believe, however, that he is entitled to an acquittal on the facts as presented.

I dissent, on the ground that, in my opinion, the prosecution has not proved the guilt of the appellants of the crime of which they were convicted.

(Sgd.)

GRANT T. TRENT.

Filed Mch. 30, 1915.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8185.

THE UNITED STATES, Plaintiff and Appellee,
versus
EMILIO VALDEZ, Defendant and Appellant.

Motion.

Now comes the appellant and defendant Emilio Valdez in the above styled cause by his counsel and moves the Court to set aside its judgment affirming the sentence below in this case and assigns the following reasons:

I.

Because the Court erred in affirming the sentence of the court below which was in violation of sub-section 1 of section 15 of General Orders No. 58 and section 5 of the Act of Congress of July 1st, 1902 commonly known as the Philippine Bill, and Article VI of the Amendments to the Constitution of the United States in that the trial judge visited the alleged scene of the crime three miles from where the court was held, took evidence in the case, heard statements of witnesses and other parties not under oath, in the absence of the defendant and appellant and without his consent while so confined in jail at the place of trial as shown by the affidavits which are a part of the record of the case in this court.

569

II.

The Court erred in affirming the judgment of the Court below convicting and sentencing the defendant and appellant upon an information upon which no preliminary investigation had been held by any magistrate, Judge, promotor fiscal, or his deputy, in violation of General Order No. 58 and of Article 5 of the Amendments to the Constitution of the United States.

III.

The court erred in affirming the judgment of the court below convicting and sentencing the defendant and appellant upon an information which was null and void in that no oath or affirmation of probable cause is affixed to said information, in violation of Article 4 of the Amendments to the Constitution of the United States and in violation of section 5 of the Act of Congress of July 1st 1902 commonly known as the Philippine Bill.

IV.

The court erred in affirming the judgment of the Court below convicting and sentencing the defendant and appellant under the existing provisions of the laws of the Philippine Islands for the issuance of warrants of arrest and for the trials of persons charged with felonies upon information, towit, sections 3, 4, 5, 6, 7, and 8 of General Orders No. 58, because said sections are unconstitutional and void in so far as they authorize the prosecution of felonies by information without any provision for an oath or affirmation to said information, being thereby repugnant to articles 4 and 5 of the Amendments to the Constitution of the United States and to section 5 of the Act of Congress of July 1st, 1902, commonly known as the Philippine Bill.

V.

The Court erred in affirming the judgment of the court below convicting and sentencing the defendant and appellant upon an information signed and presented by the promotor fiscal instead of upon a presentment or indictment of a grand jury in violation of Article 5 of the Amendments to the Constitution of the United States.

VI.

The Court erred in affirming the judgment of the Court below which tried and convicted the defendant and appellant of an infamous crime instead of submitting the question of his guilt or innocence of said crime to a trial by jury in violation of sub-section 3 of section 2 of Article 3 of the Constitution of the United States.

VII.

The court erred in affirming the judgment of the Court below which was null and void because it was in violation of section 5 of the Act of Congress of July 1st, 1902, commonly known as the Philippine Bill and of Article 5 of the Amendments to the Constitution of the United States in that it deprived the defendant and appellant of his life and liberty without due process of law.

VIII.

The court erred in affirming the judgment of the court below because said judgment was contrary to law.

571

IX.

The court erred in affirming the judgment of the court below because it was contrary to the manifest weight of the evidence.

X.

Because this court erred in convicting the defendant and appellant in violation of the law and contrary to the manifest weight of the evidence.

Manila, P. I., March 30, 1915.

(Sgd.)

SOUTHWORTH & GOYENA,
Attorneys for Defendant and Appellant.

34 Escolta, Manila, P. I.

572 The foregoing motion was denied by resolution of the Supreme Court dated March 31, 1915.

Thereafter final judgment was rendered, as follows:

573 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands, April 6, 1915.

File No. 8185.

THE UNITED STATES, Plaintiff and Appellee,

versus

EMILIO VALDEZ, Defendant and Appellant.

Judgment.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 25th day of March, A. D. nineteen hundred and fifteen.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Nueva Ecija, dated the 16th day of July, nineteen hundred and twelve, and from which the above-entitled appeal was taken, be, and the same is hereby, affirmed, sentencing the defendant to the penalty of death and to pay the costs amounting to P24.00 in this instance which the Court of First Instance shall collect by execution.

It is further ordered that the said cause be remanded to the Court of First Instance.

[Seal Corte Suprema, Islas Filipinas.]

(Sgd.)

V. ALBERT,
Clerk Supreme Court, P. I.

A true copy:

V. ALBERT,
Clerk Supreme Court, P. I.

574

Filed April 20, 1915.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8185.

EMILIO VALDEZ, Plaintiff in Error,
versus
THE UNITED STATES, Defendant in Error.

Petition for Writ of Error.

And now comes Emilio Valdez, plaintiff herein, by his attorneys, and says:

That on or about the 6th day of April, 1915, the Supreme Court of these Islands entered a judgment against this plaintiff in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States.

Manila, P. I., April 19, 1915.

SOUTHWORTH & GOYENA,
Attorneys for Plaintiff in Error, 34 Escolla, Bdo., Manila.

Received copy: Office of the Attorney-General, Apr. 20, 1915.
V. N.

575 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8185.

EMILIO VALDEZ, Plaintiff in Error,
versus
THE UNITED STATES, Defendant in Error.

Assignment of Errors.

The plaintiff in this case, in connection with his petition for a writ of error, makes the following assignment of errors which he avers occurred upon trial of the cause, towit:

1. The Court erred in affirming the sentence of the court below

which was in violation of sub-section 1 of section 15 of General Orders No. 58 and section 5 of the Act of Congress of July 1st, 1902, commonly known as the Philippine Bill, and Article VI of the Amendments to the Constitution of the United States in that the trial judge visited the alleged scene of the crime three miles from where the Court was held, took evidence in the case, heard statements of witnesses and other parties not under oath, in the absence of the defendant and appellant, the plaintiff in error herein, and without his consent while so confined in jail at the place of trial as shown by the affidavits which are a part of the record of the case in this court.

2. The Court erred in affirming the judgment of the court below convicting and sentencing the defendant and appellant, the plaintiff in error herein, upon an information upon which no preliminary investigation had been held by any magistrate, judge, promotor fiscal, or his deputy, in violation of General Order No. 58
576 and of Article 5 of the Amendments to the Constitution of the United States.

3. The Court erred in affirming the judgment of the court below convicting and sentencing the defendant and appellant, the plaintiff in Error herein, upon an information which was null and void in that no oath or affirmation of probable cause is affixed to said information, in violation of Article 4 of the Amendments to the Constitution of the United States and in violation of section 5 of the Act of Congress of July 1st, 1902, commonly known as the Philippine Bill.

4. The Court erred in affirming the judgment of the court below convicting and sentencing the defendant and appellant, the plaintiff in Error herein, under the existing provisions of the laws of the Philippine Islands for the issuance of warrants of arrest and for the trials of persons charged with felonies upon information, towit, sections 3, 4, 5, 6, 7, and 8 of General Orders No. 58, because said sections are unconstitutional and void insofar as they authorize the prosecution of felonies by information without any provision for an oath of affirmation to said information, being thereby repugnant to Articles 4 and 5 of the Amendments to the Constitution of the United States and to section 5 of the Act of Congress of July 1st, 1902, commonly known as the Philippine Bill.

5. The Court erred in affirming the judgment of the court below convicting and sentencing the defendant and appellant, the Plaintiff in Error herein, upon an information signed and presented by the promotor fiscal instead of upon a presentment or indictment of a grand jury in violation of Article 5 of the Amendments to the Constitution of the United States.

6. The Court erred in affirming the judgment of the court below which tried and convicted the defendant and appellant, the plaintiff in Error herein, of an infamous crime instead of sub-
577 mitting the question of his guilt or innocence of said crime to a trial by jury in violation of sub-section 3 of section 2 of Article 3 of the Constitution of the United States.

7. The Court erred in affirming the judgment of the court below

which was null and void because it was in violation of section 5 of the Act of Congress of July 1st, 1902, commonly known as the Philippine Bill and of Article 5 of the Amendments to the Constitution of the United States in that it deprived the defendant and appellant, plaintiff in Error herein, of his life and liberty without due process of law.

8. The Court erred in affirming the judgment of the court below because said judgment was contrary to law.

9. The Court erred in affirming the judgment of the court below because it was contrary to the manifest weight of the evidence.

10. Because this Court erred in convicting the defendant and appellant, the plaintiff in Error herein, in violation of the law and contrary to the manifest weight of the evidence.

Wherefore, the Plaintiff in Error herein, prays that the judgment of the Supreme Court of the Philippine Islands in the above entitled case may be reversed.

Manila, P. I., April 19, 1915.

SOUTHWORTH & GOYENA,
Attorneys for Plaintiff in Error, 34 Escolta, Bdo., Manila.

Received copy: Office of the Attorney-General, Apr. 20, 1915.
V. N.

578 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8185.

EMILIO VALDEZ, Plaintiff in Error,
versus
THE UNITED STATES, Defendant in Error.

Order Allowing Writ of Error.

This 19 day of April 1915, comes the plaintiff by his attorneys, and files herein and presents to the Court his petition praying for the allowance of a writ of error, and an assignment of errors intended to be urged by him, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof, the Court does allow the writ of error prayed for.

Bagnio, April 26, 1915.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

579 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Justices of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a cause which is in said Supreme Court of the Philippine Islands, before you, or some of you, between the United States, plaintiff and appellee, and Emilio Valdez, defendant and appellant, wherein a manifest error has happened, to the great damage of the said Emilio Valdez, as by *its* complaint appears, we being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 24th day of August next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 26th day of April, in the year of our Lord one thousand nine hundred and fifteen.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
*Clerk of the Supreme Court
of the Philippine Islands.*

Service by copy admitted, this 5 day of May, 1915.

RAMON AVANTINA,
Attorney General, L. P. T.

580 UNITED STATES OF AMERICA, ss:

To the Honorable the Attorney-General of the Philippine Islands:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at Washington, on the 28 day of August next, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the Philippine Islands, wherein Emilio Valdez is plaintiff in error and the United States is defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected and speedy justice be done to the parties in this behalf.

Given under my hand at the City of Baguio in the Philippine

Islands, this 30 day of April, in the year of our Lord one thousand nine hundred and fifteen.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,
Associate Justice, Acting in Vacation,
Supreme Court of the Philippine Islands.

Service by copy admitted, this 5 day of May, 1915.

RAMON AVANTINA,
Attorney General, L. P. T.

581 UNITED STATES OF AMERICA,
Philippine Islands:

Clerk's Office, Supreme Court, Philippine Islands. Filed Nov. 5,
1915, 11.5 A. M.

In the Supreme Court of the Philippine Islands.

No. 8185.

THE UNITED STATES, Defendant in Error,
versus
EMILIO VALDEZ, Plaintiff in Error.

Comes now the plaintiff in error in the above entitled case, by *their* undersigned attorneys, and unto this Honorable Court respectfully alleges:

That the translation and transcript of the records and proceedings of the above entitled case was completed by the Attorney-General of the Philippine Islands in accordance with the provisions of Act 2340 of the Philippine Legislature, and forwarded to the Supreme Court of these Islands, on the 4th day of November, 1915;

That the time for docketing the above entitled cause in the office of the Clerk of the Supreme Court of the United States at Washington, D. C., expired on August 28th, 1915;

Wherefore plaintiff in error prays this Honorable Supreme Court to extend the time for such docketing until the 31st day of December, 1915.

Manila, P. I., November 5, 1915.

SOUTHWORTH & GOYENA,
Attorneys for Emilio Valdez, 34 Escolta, Bdo., Manila.

Received copy: Bureau of Justice. Received Nov. 5, 1915.
V. N.

582 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

G. R. No. 8185.

THE UNITED STATES, Defendant in Error,
versus
EMILIO VALDEZ, Plaintiff in Error.

Order.

Upon consideration of the foregoing petition, and it appearing that there is good cause therefor, it is hereby ordered that the time for docketing the transcript of the above-entitled cause in the office of the Clerk of the Supreme Court of the United States at Washington, D. C., be and the same is hereby enlarged so that the same shall not expire before the 31st day of December, 1915.

Manila, P. I., November 6, 1915.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

583 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing Five Hundred and eighty-two (582) pages contain a true and correct translation and transcript of the proceedings had in the Court of First Instance of the Province of Nueva Ecija and in this Supreme Court of the Philippine Islands in the case entitled The United States versus Emilio Valdez, bearing No. 8185 on the docket of this Court.

In witness whereof I have hereunto signed my name and affixed the seal of this Court this 9th day of November nineteen hundred and fifteen.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk Supreme Court, P. I.

584 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in the case entitled The United States

versus Emilio Valdez bearing No. 8185 on the docket of this Supreme Court, a writ of error to the Supreme Court of the United States was duly allowed on April 26, 1915.

In witness whereof I have hereunto signed my name and affixed the seal of this Court this 9th day of November nineteen hundred and fifteen.

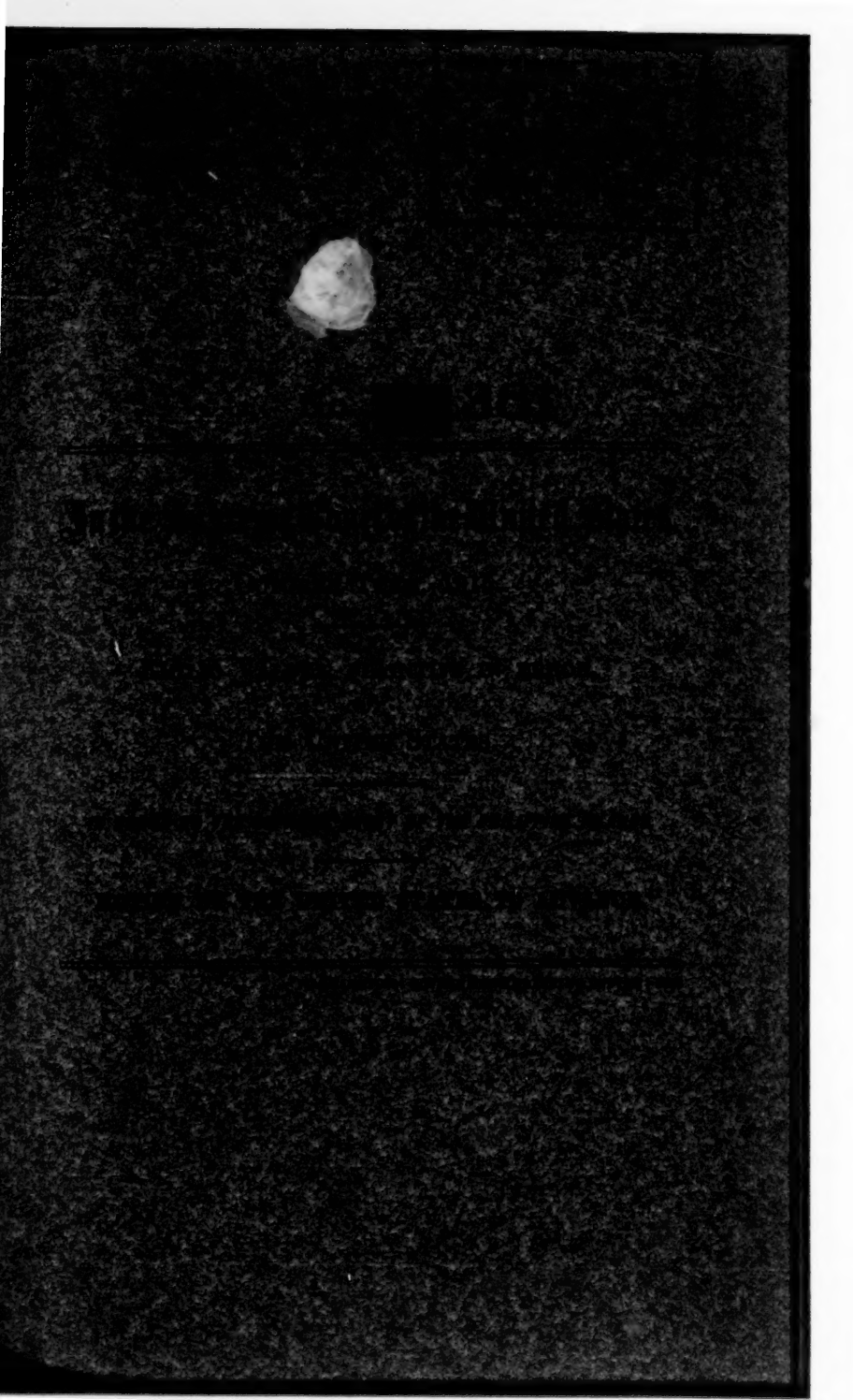
[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,

Clerk Supreme Court, P. I.

Endorsed on cover: File No. 25,105. Philippine Islands Supreme Court. Term No. 361. Emilio Valdez, plaintiff in error, vs. The United States. Filed January 25th, 1916. File No. 25,105.





In the Supreme Court of the United States.

OCTOBER TERM, 1915.

EMILIO VALDEZ, PLAINTIFF IN ERROR,	} No. 822.
v.	
THE UNITED STATES.	

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE
ISLANDS.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and respectfully moves the court to advance the above-entitled cause for hearing on a day convenient to the court during the next term.

Plaintiff in error was convicted in the Court of First Instance of the crime of murder, and was sentenced to death. The judgment was affirmed by the Supreme Court of the Philippine Islands, which court allowed a writ of error from this court, the contention of plaintiff in error being *inter alia* that because the trial judge visited the scene of the alleged murder and took testimony in the absence of the accused the latter was thereby deprived of rights guaranteed to him

by the Philippine Bill of Rights and the Sixth Amendment of the Constitution of the United States.

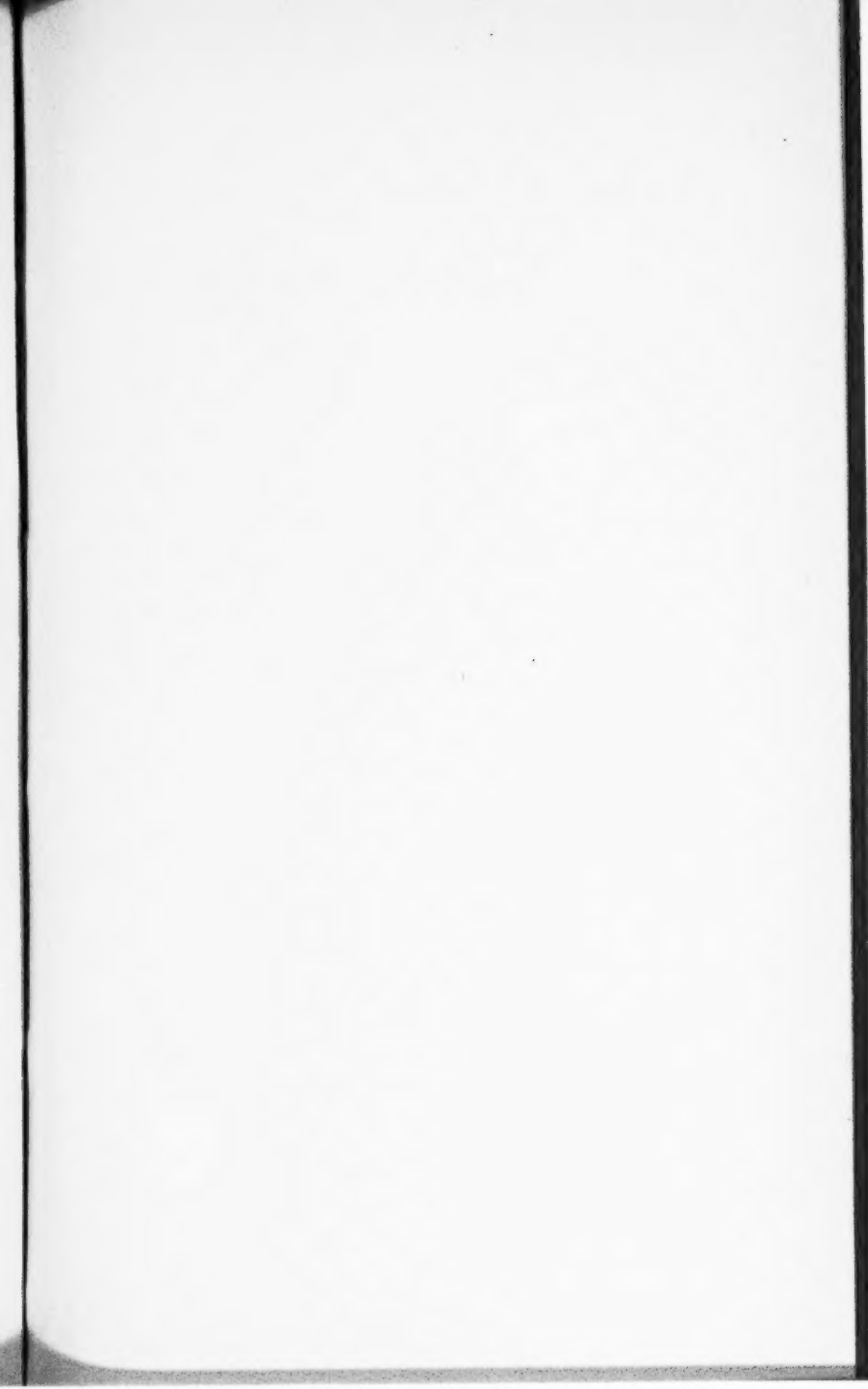
Opposing counsel concur in this motion.

JOHN W. DAVIS,

Solicitor General.

MARCH, 1916.

○





FILED
JAN 8 1917
JAMES D. WAHER
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 361.

EMILIO VALERIZ, *Plaintiff in Error,*

v.

THE UNITED STATES.

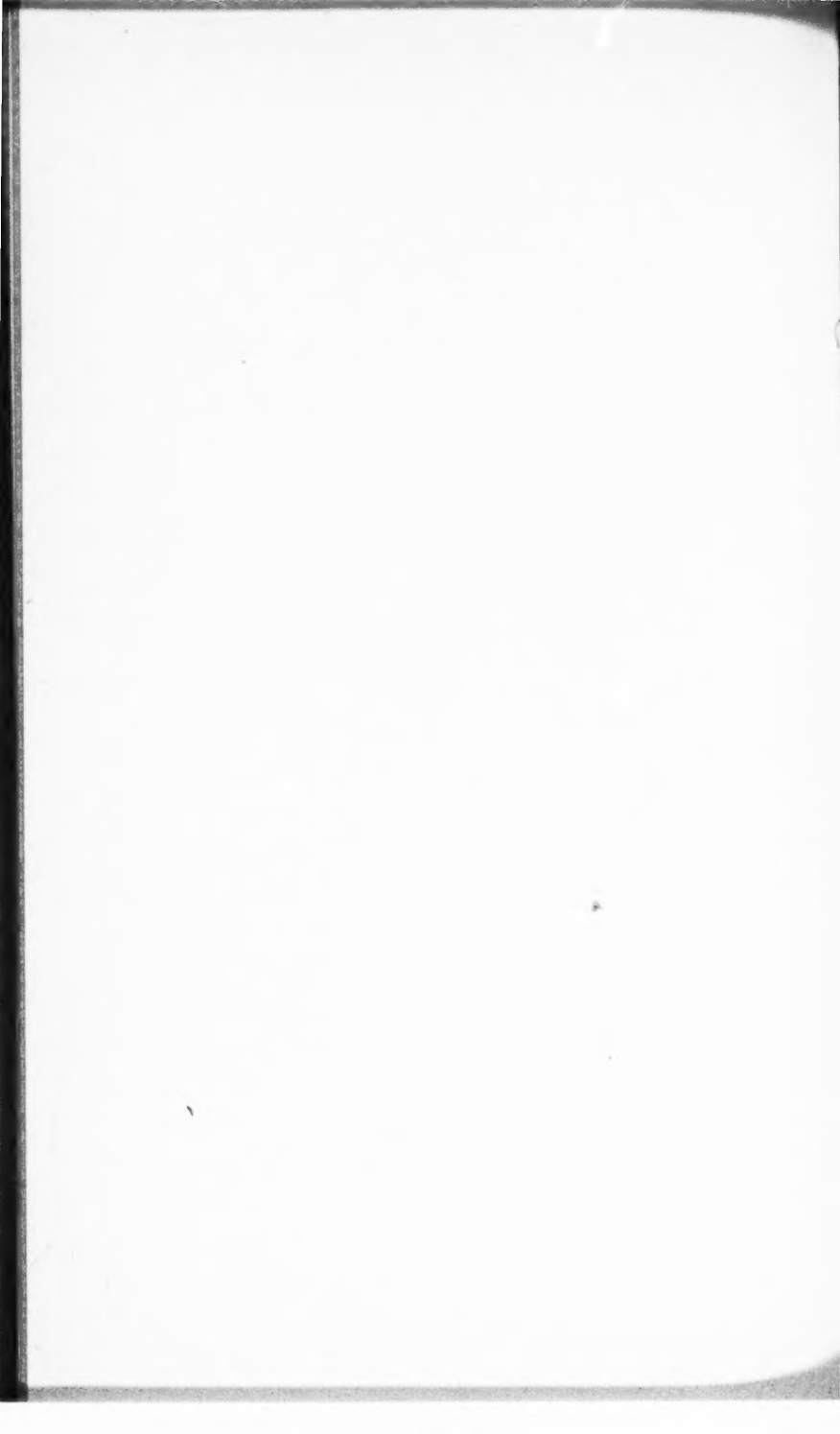
**In Error to the Supreme Court of the Philippine
Islands.**

BRIEF OF PLAINTIFF IN ERROR.

**TIMOTHY T. ANSBERRY,
CHALLEN B. ELLIS,
*Attorneys for Plaintiff in Error.***

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

EMILIO VALDEZ, *Plaintiff in Error*,

v.

THE UNITED STATES.

} No. 361.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This case comes to this Court from a judgment of the Supreme Court of the Philippine Islands finding defendant below, Emilio Valdez, guilty of murder and sentencing him to death.

The issues here presented are: (1) Whether the absence of the accused during a part of the proceedings in the trial constitutes an error requiring reversal, and (2) whether there was any evidence adequate to warrant the conviction.

These issues are the same as two of the issues considered and passed upon by this Court in *Diaz v. United States*, 223 U. S. 442, 449, 459. The facts, however, upon which the two issues are presented, are essentially different from those in the *Diaz case*.

The facts in brief outline are as follows:

On March 17, 1912, one Eusebio Yuson, a resident of Gapan, Province of Nueva Ecija, P. I., while about to enter his home, was instantly killed by shots from a gun fired from some spot outside or at the line of his property. About two months after this occurrence several persons in Gapan were at various times arrested and charged with this murder.

Among them was Juan Gatmaitan, Mateo Arcilla and Lucas Figueroa, who were, on or about May 10, 1912, arrested by the Philippine constabulary and confined in the constabulary barracks at Cabanatuan. The prisoners, Gatmaitan, Arcilla and Figueroa were Philipinos of the most ignorant and degraded type, two of them unable to read or write. About ten days after their imprisonment began they made several affidavits implicating various persons in the commission of the murder of Yuson. Afterwards, Emilio Valdez and Francisco Amante were also arrested and charged with the murder.

Defendant below, Valdez, was brought to trial together with Francisco Amante on July 5, 1912, before Judge Isidro Parades, without a jury.

The information upon which the defendants were tried was filed on July 5, 1912 (Rec. p. 2). It was not supported by oath or affirmation (Rec. p. 2). On the afternoon of the same day that the information was filed the defendants, over their protest, were required to proceed with the trial. Counsel for defendants was not present, and could not be secured, and a counsel *de officio* was appointed, and on his request for time to prepare and present a demurrer to the information, was given a half hour. Subsequently another counsel *de officio* was appointed, who was given until the following day to prepare a demurrer. Demurrer was interposed, and

promptly overruled. Objections to all these proceedings were made by counsel for defendants. (Rec. pp. 5-7).

The case against Valdez and Amante rested practically on the testimony of Juan Gatmaitan. This witness was unable to read or write, even in his native language, or to sign his name, and was so ignorant that he could not even tell the time of the day, or distinguish the seasons except by the crops, or to give any dates, even in years. He was, in addition, a worthless character, having been before convicted of stealing.

The story which he told in Tagalog, a native Philippine dialect, repeated to the court by an interpreter, and upon the truth of which the whole case depended, was a most astonishing one. It was that Emilio Valdez, a prominent and well-to-do citizen of one of the provinces of the Philippines, a leader of one of the political parties, and belonging to one of the most influential families in the community, whom Gatmaitan had seen and spoken to only three times in his life, had on one occasion accosted the witness, and offered him 900 pesos (a sum which was more than the witness could earn in ten years) to assassinate Eusebio Yuson, an elderly man of prominence living in the same community, which offer Gatmaitan refused "*because he was too busy,*" and that on another occasion he went to the house of Emilio Valdez, and there secured a double-barrelled shot gun, and accompanied Valdez to the yard belonging to Eusebio Yuson and when Yuson walked up the steps of his house pointed the gun at him, but not knowing the slightest thing about the use of a gun or how to fire it, it failed to go off, whereupon Emilio Valdez, who had been standing with him watching the proceedings, reached over his shoulder and pulled the triggers causing the shots to be discharged, which struck down Yuson. (Rec. pp. 9-13).

Valdez took the stand in his own defense and denied that he had sought to induce anyone to murder Yuson, and denied that he was present at the time of the murder, and put in the only kind of defense that was possible, that is, he showed where he had been on the day and evening in question, and in this he was corroborated by a number of witnesses. (Rec. pp. 160-169.)

There were other witnesses for the prosecution (Arcilla and Figueroa) who, it is claimed, corroborated some of the incidental bits of testimony of Gatmaitan, but without his testimony, and without the essential truth of every leading fact in his story there would be no case whatever for the prosecution.

A few days after the trial was over Juan Gatmaitan made a sworn statement repudiating his testimony entirely, and stating that he had been forced to tell the story that he had told on the witness stand, and that among others who told him what to state were Mateo Arcilla and Lucas Figueroa, who had been accused of the same crime but who were never brought to trial by the authorities, and that he had been promised "that they would not abandon me" if he told the story made up for him. (Rec. pp. 229-230.)

In addition to this, at a subsequent trial, Gatmaitan himself told an entirely different story, with elaborate details of his doings before and after the crime. (Rec. p. 292.)

A few days after his arrest, and months before the trial, Figueroa, one of the alleged corroborating witnesses, signed, by thumb print, an affidavit in which he placed the crime on Gatmaitan, *Amante* and Arcilla, and subsequently a few days later, in another affidavit, he added the name of *Valdez*. (Rec. p. 203.) Arcilla, the other alleged corroborating witness, was sometime after the

trial convicted of the murder of his wife, and while in prison awaiting the execution of the sentence, or an appeal, signed an affidavit completely repudiating his testimony on the witness stand, and stating the inducement which led him to tell the story he had told. (Rec. pp. 277-280).

The Supreme Court of the Philippine Islands, which reviewed the evidence to determine the guilt or innocence of the defendant below, divided in opinion, and two of the judges, Moreland and Grant T. Trent, dissented, holding, one, that the accused Valdez was entitled to an acquittal, and the other, that the prosecution had not proved the guilt of the defendant. (Rec. p. 309.)

Towards the close of the evidence Mr. Buencamino, special counsel employed by the widow of the deceased to aid in the prosecution, requested the Court to view the scene of the crime. There was no objection from counsel for the defendant. No suggestion was made as to who should accompany the Judge on the inspection except that Mr. Buencamino urged that the Judge, when he viewed the premises, should ask any persons around to point out the places referred to in the testimony. A large number of people accompanied the Judge or were present at the view of the premises. In fact, every one having any interest in the trial seems to have been around at this view except the one most vitally concerned, the defendant, Emilio Valdez, who was at the time confined in jail. The defendant was not consulted, and no expression from him is found in the record, and before the view was had he was taken back to jail, although he was, at the time, on trial for his life, and was afterwards sentenced to death. (Rec. pp. 198, 199, 261-276.)

There is a conflict in the affidavits of some of the persons present at the view of the premises, as to what took

place on the occasion in question. The conflict, however, resolves itself mainly into different views as to what would constitute "evidence" on such an occasion.

But the facts are undisputed that the prisoner was on trial for his life; that a view of the premises was taken by the Judge without consulting the prisoner, and that the prisoner was absent in custody at the time the view was taken.

ASSIGNMENTS OF ERROR.

The assignments of error are as follows:

1. The Court erred in affirming the sentence of the Court below which was in violation of sub-section 1 of section 15 of General Orders No. 58 and section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill, and Article VI of the Amendments to the Constitution of the United States in that the trial judge visited the alleged scene of the crime three miles from where the Court was held, took evidence in the case, heard statements of witnesses, and other parties not under oath, in the absence of the defendant and appellant, the plaintiff in error herein, and without his consent while so confined in jail at the place of trial as shown by the affidavits which are a part of the record of the case in this Court.

2. The Court erred in affirming the judgment of the court below convicting and sentencing the defendant and appellant, the Plaintiff in Error herein, upon an information upon which no preliminary investigation had been held by any magistrate, judge, promotor fiscal, or his deputy, in violation of General Order No. 58 and of Article 5 of the Amendments to the Constitution of the United States.

3. The Court erred in affirming the judgment of the court below convicting and sentencing the defendant and appellant, the Plaintiff in Error herein, upon an information which was null and void in that

no oath or affirmation of probable cause is affixed to said information, in violation of Article 4 of the Amendments to the Constitution of the United States and in violation of section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill.

4. The Court erred in affirming the judgment of the court below convicting and sentencing the defendant and appellant, the Plaintiff in Error herein, under the existing provisions of the laws of the Philippine Islands for the issuance of warrants of arrest and for the trials of persons charged with felonies upon information, to-wit, sections 3, 4, 5, 6, 7 and 8, General Orders No. 58, because said sections are unconstitutional and void insofar as they authorize the prosecution of felonies by information without any provision for an oath of affirmation to said information, being thereby repugnant to Articles 4 and 5 of the Amendments to the Constitution of the United States and to section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill.

5. The Court erred in affirming the judgment of the court below convicting and sentencing the defendant and appellant, the Plaintiff in Error herein, upon an information signed and presented by the promoter fiscal instead of upon a presentment or indictment of a grand jury in violation of Article 5 of the Amendments to the Constitution of the United States.

6. The Court erred in affirming the judgment of the court below which tried and convicted the defendant and appellant, the Plaintiff in Error herein, of an infamous crime instead of submitting the question of his guilt or innocence of said crime to a trial by jury in violation of sub-section 3 of section 2 of Article 3 of the Constitution of the United States.

7. The Court erred in affirming the judgment of the court below which was null and void because it was in violation of section 5 of the Act of Congress of July 1, 1902, commonly known as the Philippine Bill and of Article 5 of the Amendments to the Con-

stitution of the United States in that it deprived the defendant and appellant, Plaintiff in Error herein, of his life and liberty without due process of law.

8. The Court erred in affirming the judgment of the court below because said judgment was contrary to law.

9. The Court erred in affirming the judgment of the court below because it was contrary to the manifest weight of the evidence.

10. Because this Court erred in convicting the defendant and appellant, the Plaintiff in Error herein, in violation of the law and contrary to the manifest weight of the evidence.

ARGUMENT.

I.

ABSENCE OF THE ACCUSED DURING PART OF THE PROCEEDINGS BEFORE THE TRIAL COURT CONSTITUTES AN ERROR REQUIRING REVERSAL.

The record shows that on the last day of the trial Mr. Buencamino, the special assistant to the prosecutor employed by the widow of the deceased, asked the Court to view the premises. (Rec. p. 198).

Counsel for the defense did not object, and the Court agreed, stating: "The result of that inspection will be evidence for both parties." (Rec. p. 198). Some discussion took place as to the possibility of taking testimony at the view, whereupon Buencamino for the prosecution urged upon the Court "not to dispense with a task in which the Court may exercise its discretion so that when the Court arrives there it may ask of unknown persons where the deceased fell, where the wad was found, where Gatmaitan was, and where Mateo Arcilla was."

After the trial, and on motion for a new trial, certain affidavits were filed purporting to show by various witnesses what took place at the view of the premises. These affidavits will be considered further along in the argument. It is sufficient for the present purpose to say that, without dispute, it is established that the accused was on trial for his life, that he was not consulted as to any view of the premises, and gave no expression, and that at the time of the view and inspection, in the presence of witnesses, whatever may have taken place there, he was absent and confined in jail three miles away.

Section 5 of the Philippine Civil Government Act secures to the accused in all criminal prosecutions "the right to be heard by himself and counsel, etc."

Section 3270 Philippine Laws, Compiled Statutes 1907, provides as follows:

"In all criminal prosecutions the defendant shall be entitled to appear and defend in person and by counsel at every stage of the proceeding."

It is unnecessary to argue at length the question of the interpretation of these provisions of law, or the question of the rights of an accused in a felony case, and the circumstances under which these rights may be waived, nor the circumstances under which they may not be waived, for all these questions are now settled by the recent decision of this Court in *Diaz v. United States*, 223 U. S. 442. The full exposition of the subject is found on pages 454 to 457 of the opinion in that case and fully covers the contentions we desire to present. The language of the opinion referred to is as follows:

"We are thus brought to the question whether the provision in Sec. 5 of the Philippine civil government act, securing to the accused in all criminal prosecutions 'the right to be heard by himself and counsel',

makes his presence indispensable at every stage of the trial, or invests him with a right which he is always free to assert, but which he also may waive by his voluntary act. Of course, if that provision makes his presence thus indispensable, it is of no moment that the Philippine laws do not go so far, for they cannot lessen its force or effect. An identical or similar provision is found in the Constitution of the several states, and its substantial equivalent is embodied in the 6th Amendment to the Constitution of the United States. It is the right which these constitutional provisions secure to persons accused of crime in this country that was carried to the Philippines by the congressional enactment, and, therefore, according to a familiar rule, *the prevailing course of decision here may and should be accepted as determinative of the nature and measure of the right there.* *Kepner v. United States*, 195 U. S. 100, 124; 49 L. ed. 114, 122; 24 Sup. Ct. Rep. 797; 1 A. & E. Ann. Cas. 655.

As the offense in this instance was a felony, we may put out of view the decisions dealing with this right in cases of misdemeanor. In cases of felony our courts, with substantial accord, have regarded it as extending to every stage of the trial, inclusive of the empanelling of the jury and the reception of the verdict, and as being scarcely less important to the accused than the right of trial itself. And with like accord they have regarded *an accused* who is in custody and *one who is charged with a capital offense as incapable of waiving the right*; the one, because his presence or absence is not within his own control; and the other because, in addition to being usually in custody, he is deemed to suffer the constraint naturally incident to an apprehension of the awful penalty that would follow conviction. But, where the offense is not capital and the accused is not in custody, the prevailing rule has been, that if, after the trial has begun in his presence, he voluntarily absents himself, this does not nullify what has been done or prevent the completion of the trial, but, on the contrary, operates

as a waiver of his right to be present, and leaves the Court free to proceed with the trial in like manner, and with like effect as if he were present."

This Court thus laid down the rule of interpretation of Philippine Laws to be that the prevailing course of decision in the United States should be accepted as determinative of the nature and measure of the rights provided for in the laws applicable to the Philippine Islands, and that the prevailing course of decision in the United States is that an accused who is on trial charged with a capital offense is incapable of waiving the right to be present.

This conclusion is directly applicable to the case at bar, inasmuch as the accused was on trial for his life, and was afterwards sentenced to death, and the proceeding taken by the judge was in the prisoner's absence.

There is only one subject for discussion remaining, and that is whether the rule as to the necessity of the presence of the accused is any different when the proceedings at which he was absent was a *view of the premises*, and not the taking of testimony in the court room, instructions to the jury, etc. There is some authority for the proposition that a view of the premises is not "a part of the trial" on the ground that it does not involve the obtaining of evidence. Decisions to this effect are mainly those dealing with the question as to whether a review on appeal is prevented by lack of a complete record when it appears that the jury viewed the premises; and the solution of the difficulty in some of the cases is that review may be had because a view of the premises is not a part of the trial. Some authorities have carried this suggestion into criminal cases where the question arose as to the necessity for the presence of the accused at a view of the premises. But without attempting to analyze these authorities, or the cases the other way, it is sufficient to say that both sound

reason and the weight of authority support the proposition that a view of the premises in a criminal case is a part of the trial.

3 *Wharton Criminal Law*, 7 Ed., Section 3160:

"The visit (of the jury) must be made in the presence of the accused, who is entitled to have *all the evidence* received by the jury taken in his presence."

22 *Enc. Plead. & Pract.*, p. 1059:

"In criminal cases the accused is entitled to be present if the jury is sent to view the locus of the crime, as a view in the absence of the accused would violate his constitutional right to appear in person, and be confronted with the witnesses against him."

A few cases, giving the reasoning on the subject will be cited:

Tully v. Railroad Co., 134 Mass. 499:

"In most cases of a view a jury *must of necessity* acquire a certain amount of information which they may properly treat as evidence in the case."

Wall v. United States Mining Co., 232 Fed. 613:

"By the weight of authority the facts ascertained by a view are to be considered as in evidence and given due weight in reaching a conclusion. *Indeed, any other rule is incapable of practical application.*"

People v. Milner, 122 Cal. 171:

"(That the jury receive evidence) certainly is the case. If, for example, it were material to determine whether a hole in the panel of a door was or was not caused by a bullet, it would be permissible to remove the panel, to bring it into the court room, offer and have it received in evidence, and submit it to the inspection of the jury. It would not for a moment be doubted, if this procedure were adopted, but that the physical object was evidence in the case. If,

instead of so doing, the Court should direct that the place where the material fact occurred should be viewed by the jury, and the jury should be conducted to the spot, and the panel of the door pointed out to them, would it be any the less the reception of evidence because obtained in this way? Certainly not."

Benton v. State, 30 Ark. 328:

"The record is silent in that case, as in this case, as to whether the prisoner asked permission to accompany the jury, or was offered the privilege of doing so.

"It is probable that he was in prison when the view was made by the jury.

"A view of the place, where the crime is alleged to have been committed, by the jury is *part of the trial, and may be an important step in the trial*, and the presence of the prisoner at a view in a case involving life or liberty, that he may have an opportunity to observe the conduct of the jury, and whatever occurs there, may be of the utmost consequence to him."

The whole theory upon which the accused is given a right to be present at the trial applies with equal force to his presence at a view of the premises. The right to be present, "scarcely less important to the accused than the right of trial itself" (*Diaz v. U. S. supra*) was clearly not intended to be limited to any particular occasion, or any particular kind of proceeding in the trial, but extends to "any steps taken" (*Hopt v. Utah*, 110 U. S. 574) "from the empanelling of the jury to the reception of the verdict," and during this time "nothing shall be done in the absence of the prisoner" (*Lewis v. U. S.*, 146 U. S. 371, 372).

It is said by this Court in *Lewis v. United States*, 146 U. S. 370, 373, speaking of the right of the accused to be

present and be confronted with the witnesses, and quoting from 13 Gratt 763:

"It is within the scope of this right that he be present, not only when the jury are hearing his case, but at any subsequent stage *when anything may be done* in the prosecution by which he is to be affected."

And what is true of a criminal trial before a jury is equally true of a criminal trial had, as in the Philippines, before a judge only. (*Diaz v. United States*, 223 U. S. 442).

The right of the accused to be present is given him, undoubtedly, that he may have the opportunity to observe, and be observed, at every step taken so that he may make the best use of his own knowledge of the facts, and use that knowledge either in his testimony or in his conferences with counsel. At any moment of the trial something may arise which needs supplementing by facts of which the accused knows, or something may appear, either by observation of the jury or in oral evidence, which can be easily explained by the knowledge which the accused has. To say that the accused must be present when testimony already transcribed, is read, or when the Court instructs the jury, but that he need not be present when the jury is making an examination of objects and places about which the testimony centers and confirming or testing the testimony by such actual view, is such inconsistency as ignores the real reason why the accused was ever given the right at all.

But whatever may be the contention as to the proper function of a view of the premises, there can be no doubt *in the case at bar* that there was the "taking of evidence" at the view of the premises.

There are, in the record, numerous affidavits found at pages 261 to 268, 271 to 276, relating to the occurrences at the view. These affidavits are conflicting in their state-

ments as to what took place. It is not necessary to solve this conflict, or to weigh the evidence, because upon the undisputed facts it is clear that there was the taking of evidence within the legal meaning of that term. At pages 198-199 of the record there is shown the proceedings preliminary to the view of the premises. At the conclusion of the hearing in open court, Mr. Buencamino, special assistant to the prosecutor, said:

"We will close our evidence asking the Court that it visit the place of the occurrence in order to make there an inspection so that the Court may judge the distances."

The Court agreed to view the premises and stated: (Rec. p. 198):

The Court: "The result of that inspection will be *evidence for both parties.*"

Mr. Southworth, of counsel for the defendant, objected to anything in the nature of testimony at the view. To this, Mr. Buencamino replied (Rec. p. 199):

"What Mr. Southworth says would be very advisable, but I believe it would be very advisable also not to dispense with a task in which the Court may exercise its discretion, so that when said Court arrives there it may ask of unknown persons where the deceased fell, where the wad was found, where Gatamaitan, and where Mateo Arcilla was."

There was some further objection by counsel for the defense, whereupon the Court said:

"The Court has no objection to making that inspection."

As shown by the photographs marked 498 and 499, opposite page 274 of the record, there was a crowd of

people attending and surrounding the judge at the time of the inspection of the property and house where Yuson was killed. The affidavits of a number of persons present alleged that various individuals spoke to the judge and discussed with him the location of places and certain facts which happened at the time of the murder. The particular discussions recited in the affidavits for the defense were denied in the affidavits for the prosecution but the affidavits for the prosecution rest upon an interpretation of the word "evidence" in statements made to the effect that "no evidence was taken." But there is no denial that various persons pointed out to the Court the location of various objects and places and witnesses about which the testimony was concerned. Not only was this pointing out intended by the prosecution but that it actually took place is admitted in the affidavits for the prosecution. It may not be improper in setting forth the contention of each side as to what took place at the view to quote in full two of the affidavits, one of Mr. Southworth, counsel for the accused, and the other of Mr. Buencamino, of counsel for the prosecution.

Mr. Southworth's affidavit is as follows:

"L. M. Southworth being by me first duly sworn, deposes and says: I was one of the attorneys of Emilio Valdez, charged with the assassination of Eusebio Yuson on the 17th day of March, 1912. The trial was had at San Isidro, Province of Nueva Ecija, beginning on the 8th and ending on the 13th day of July, 1912. I was employed by and really represented said Valdez in said trial, but in accordance with a suggestion by the Court, in order to facilitate the trial, it was arranged that I should nominally appear for Francisco Amante, one of the defendants. After all the witnesses on both sides had been examined at San Isidro, the place where the trial had begun, the prosecution suggested that the

Court take a view of the place where the killing was alleged to have occurred. I did not in words oppose the suggestion, but stated that if any witnesses were to be examined or anyone was to talk to the Court at the scene of the occurrence that I was opposed to the proposition to take a view of the premises.

"What I said on that occasion will more fully appear in the record, to which reference is hereby made. The thing which I apprehended would occur did take place at the scene of the occurrence, and in an intensified form. The defendant Valdez was left confined in jail at San Isidro, and the judge went to the scene of the killing, accompanied by the attorneys on both sides. The defendant was not consulted by the judge as to whether or not he desired to accompany the Court in this inspection. Neither were his attorneys consulted. The killing was alleged to have occurred in the Municipality of Gapan, about three miles distant from San Isidro. When the judge arrived at the house of the deceased in Gapan, where the killing is alleged to have taken place, Perfecta de Guzman, the widow of the deceased, explained to the judge many occurrences which she claimed had taken place on the night of the killing of Yuson. She repeated to the judge what she claimed to have said to the deceased just prior to the killing and illustrated how and where the deceased had fallen and discussed many other matters in connection with the case, during all of which time she was crying and wringing her hands in grief. At the same time, Captain E. W. Crockett, an official of the Philippine Constabulary, who had been very zealous in working up the evidence against said Valdez, and who, since the trial, it has been charged in an affidavit by at least one of the witnesses for the prosecution, was an official of a body which forced and intimidated him, the witness, to give false testimony against the said Valdez, pointed out to the judge the bullet marks on the stairs where it is claimed the deceased fell, and on the wall of the house, purporting to have been made by the

shot fired by the assassin at the time of the killing. The said Crockett pointed out to the judge the place which he, the said Crockett, said had been indicated to him by Gatmaitan, the man who is alleged to have done the shooting, as the place from which the fatal shot was fired, and the said Crockett made other statements to the judge as to what Gatmaitan had stated to him, the said Crockett, as to other circumstances of the case. Said Crockett walked through the streets of Gapan with the judge, pointing out to him various objects which had been referred to in the evidence during the trial, among them being the drug store of de los Santos, the residence of the defendant Valdez and the Municipal Building. During a part of the time that the objects in Gapan were being inspected the judge and said Crockett were alone. The said Crockett discussed the distance between various objects with the judge, giving him his opinions as to the same, and particularly as to the distance from the house of deceased to the house of the defendant. The said Crockett told the judge in this connection that he, the said Crockett, had on a former occasion measured the said distance with the "speedometer" on his motorcycle. Several times during said inspection I made objections, as the attorney of Valdez, to the judge as to the conduct of Perfecta de Guzman and Captain Crockett, but they were allowed to continue their conversations with the judge. During all of said inspection and taking of evidence in Gapan, said Valdez was confined in jail at San Isidro, three (3) miles away."

The affidavit of Mr. Buencamino is as follows:

"I, Felipe Buencamino, Jr., after having been duly sworn, and at the request of the Attorney-General of the Philippine Islands, freely and spontaneously state:

"That I was in the house of deceased Eusebio Yuson, in the Municipality of Gapan, in the Province of Neuva Ecija, on the 12th day of July, 1912, at

the time when Judge Paredes of the Court of First Instance visited said Municipality of Gapan in an extra-judicial capacity.

"I saw Judge Paredes inspect said municipality and particularly the house and the lot on which the house of the accused Emilio Valdez is located, as well as the house, and the lot on which the house of the deceased Eusebio Yuson is located. On said occasion Judge Paredes neither received any *evidence* nor admitted any *testimony* referring to the case then being prosecuted against the aforesaid Valdez. According to my best recollection I did not on that occasion see Perfecta de Guzman, the widow of the deceased Yuson, cry, but I saw her at a place distant from the Judge.

"I also state that on that occasion Captain Crockett, of the Constabulary, did not give any *evidence* before Judge Paredes, but, as I remember, said Crockett had a discussion with Attorney Southworth in regard to the distance between the house of the deceased Yuson and that of the accused Valdez, but according to my best recollection it did not take place in the presence of the Judge. That the deponent and Mr. Southworth also measured the distances to satisfy themselves, but this also was not done in the presence of Judge Paredes."

Antonio Villareal, Assistant Attorney in the Bureau of Justice, and representing the Government in the prosecution, stated in his affidavit "that the different places testified to by the witnesses in the court below were pointed out to the Judge by the private prosecutor, Mr. Felipe Buencamino, Jr.," and by others.

It is impossible to read all the affidavits, both for the defense and the prosecution, without seeing clearly that there was considerable discussion with the Judge as to the location and position of various witnesses and places about which there had been dispute in the testimony. Counsel

and other persons signing affidavits in support of the position of the prosecution did not consider that this amounted to the taking of evidence, and so contented themselves with denying that any "evidence" was taken. But such conduct at the view of the premises would, if nothing else were established, constitute the taking of evidence. It would hardly seem necessary to cite authorities on this proposition, but a few cases in the State courts may be referred to.

In *People v. Hull*, 86 Mich. 446, the Supreme Court of Michigan said (referring to conduct at the view of the premises in a criminal case):

"Anything which took place which was in the nature of testimony certainly could not be given to the jury in the absence of the respondent."

In *People v. Green*, 53 Calif. 60, the Supreme Court of California (referring to the action of the Court below in directing the jury to view the premises) stated:

The Court said: "He may go and show them where he stood and where the party stood but not any further."

"The action of the Court was opposed * * * to the principle which gives to a defendant the privilege of being confronted by the witnesses against him."

In *State v. Bertin*, 24 La. Ann. 46, a view of the premises was had by the jury in the absence of the Judge, and the defendant, and a question was made whether any evidence was taken at the view. The Court said:

"The judge *a quo* states at the foot of the bill of exceptions that the jury were specially instructed not to converse with the witness and the witness was instructed 'to make no explanations, but to confine himself to pointing out appearances as described in said diagram.'

"Concede that in the absence both of the accused and the judge * * * the witness and the jury obeyed these instructions to the letter. It would result merely that the witness gave testimony on the premises, out of court, and in the absence of the accused, in the same way that a dumb person gives testimony, namely, by signs, and it needs no argument to prove that the effect of such 'pointing out' in dumb show, is as potent with a jury as if the verification of the diagram had been enforced with a multitude of words."

But if any doubt could remain as to the right of the accused to be present at the view, because of any technical definition of the word "trial" it is disposed of in the case at bar by the broad language of the Philippine Code. That language does not limit itself to occurrences "at the trial" but refers specifically to "*every stage of the proceedings.*"

In *Hopt. v. Utah*, 110 U. S. 574, it was contended by the prosecution that although the defendant must be present "at the trial" he need not be present at an examination of the jury on their *voir dire* because that was a proceeding preliminary to the trial. This Court disposed of that contention in very broad language. Said the Court:

"The argument in behalf of the Government is that the trial of the indictment began after and not before the jury was sworn; consequently, that the defendant's personal presence was not required at an earlier stage of the proceedings. Some warrant, it is supposed by counsel is found for this position, in decisions construing particular statutes in which the word 'trial' is used. Without stopping to distinguish those cases from the one before us, or to examine the grounds upon which they are placed, it is sufficient to say that the purpose of the foregoing provisions of the Utah Criminal Code is, in prosecutions for felonies, to prevent *any steps being taken*, in the absence of the

accused and after the case is called for trial, which involve his substantial rights. * * *

"The necessities of the defense may not be met by the presence of his counsel only. For every purpose, therefore, involved in the requirement that the defendant shall be personally present at the trial, where the indictment is for a felony, the trial commences at least from the time when the work of impanelling the jury begins."

Just as in *Hopt v. Utah, supra*, the language of the statute was not merely that the accused must be present "at the trial by the jury," but "at the trial," and so was broad enough to include the preliminary examination of the jurors, so the language of the Philippine Code does not concern merely the presence of the accused "at the trial" but, as if meeting the very suggestion made here, refers in the broadest language to "*every stage of the proceedings.*"

It would seem clear that under such a statute the accused, if required to be present at all, would have to be present from the beginning of the proceedings until the end, from the arraignment until the verdict or judgment.

Since the accused was charged with a capital offense, and could not, therefore, under the decisions of this Court, waive his right to be present at any stage of the proceedings, it was clearly error to have the view of the premises taken in this case, in the absence of the accused.

II.

THERE WAS NO EVIDENCE ADEQUATE TO WARRANT THE CONVICTION.

In deciding this case on appeal from the Court of First Instance, the Supreme Court of the Philippine Islands reviewed the evidence in order to determine the guilt or innocence of the accused. The Court divided in opinion

on this question, Judges Carson, Aralano, Torres, and Aralullo concurring in the opinion of the majority, and Judges Moreland and Trent dissenting.

The conclusion of the majority professedly rested on certain principles or theories by which the majority was guided in considering and applying the law to the facts. If these theories or principles (analogous to instructions which the Court gave to itself in considering the evidence) are fundamentally wrong, or without any evidence whatever to support them, we submit that the judgment should be reversed unless it is clear, upon the whole record, that on any theory the accused was guilty beyond a reasonable doubt.

The two vital questions in the case were, first, the credibility of the account given by an alleged eye-witness to the assassination; and, second, the motive, or lack of motive, for the crime. In considering the reasoning of the majority it is of the utmost importance to bear in mind the basis for their conclusions on these two questions. This does not require the weighing of the evidence but merely a determination of the correctness of the principles upon which alone the majority concluded, or could conclude, that the defendant was guilty of the crime of murder.

First, as to the truth of the statements made by the alleged eye-witness. As before stated, the case against Valdez practically rested upon the testimony of one Juan Gatmaitan, and incidentally upon such corroboration of minor details as there was in the testimony of his alleged confederates, Arcilla and Figueroa. As will be seen from an inspection of the opinion (Rec., pp. 280-309), the determination of the guilt of the defendant rested *not upon a belief that the witnesses who implicated him in the murder told the truth on the witness-stand, but upon the greater probability of the incidents which they recited having*

occurred, than that the story implicating Valdez could have been invented; in other words, that it was more probable that the incidents occurred than that the accused was innocent. This theory is repeated in various forms in a number of places in the opinion. We select a few instances only.

At pages 289 and 295, it is said, referring in a general way to the story of Gatmaitan to the effect that he accompanied Valdez to the scene of the murder and that Valdez leaned over his shoulder and helped him fire the gun:

"A good deal of talent is required to invent a drama such as these witnesses have related, the denouement of which was the murder of Yuson; and for such witless persons to have been able to reproduce that drama here by narration we are forced to admit that they did in fact act the very rôle which each of them attributed to himself.

"We accept it as true *not because of any inherent probability that these witnesses would tell the truth when called to testify under oath*, but rather because of the inherent impossibility that they could have been testifying falsely when they told their story of the commission of the crime at the trial of Valdez, etc."

And at page 296:

"We do not for one moment believe that the admissions and confessions of these informers were the result of a guilty conscience compelling them, when stricken by remorse, to speak the truth."

Again at page 304:

"We do not rest our conviction of his guilt on the mere probability that any one of the self-confessed accomplices would tell the truth, when called to the witness-stand, but upon the inherent impossibility that they and the other witnesses for the prosecution could have given the account without betraying its falsity, etc."

Again at page 305:

"We are firmly convinced that it was an *absolute impossibility* that he (referring to one Garcia) or any one else, could have invented the story told by this witness * * * that he could have instructed and prepared the ignorant man who told it in open court, * * *."

In substance and effect this theory of the Court was that the witnesses who testified as to the acts of Valdez were not to be believed under oath, but that it was more probable that the incidents which they related happened than that such ignorant men could have invented or have been instructed to tell the story they told.

In order to understand the circumstances under which this theory was applied to the facts, it is necessary to detail briefly some of the history of the case as shown by the record.

After the foul and unprovoked assassination of Yuson at the steps of his own home, the police authorities were unable for sometime to get the slightest clue as to the murderer or murderers, and the crime remained a mystery for a month or more. The first persons to be arrested were Mateo Arcilla, who lived in Gapan, where Yuson was killed, and Lucas Figueroa, whose employer lived within a few meters of Yuson's house. These two belonged to the trio described by the Court (Rec., pp. 304, 306) "as ignorant and besotted," "densely ignorant, of the most limited instruction and of a notably low order of intelligence." Upon Figueroa's arrest he was taken in charge apparently by the Philippine Constabulary, and confined in jail. On May 25, 1912, he signed, before a Justice of the Peace, an affidavit in which he implicated himself and others in the crime of the murder of Yuson.

The story which he told, under oath, was as follows: That one night about a month before the murder of Yuson, he was walking with Gatmaitan and Gatmaitan said to him that *Francisco Amante* would pay a thousand pesos to the one who murdered Eusebio Yuson, and that the witness replied that he did not care for such a thing; and on the night of the murder, witness was at a small tree close to the house of Yuson, and met Gatmaitan, accompanied by *Mateo Arcilla*, and that Gatmaitan said: "Now is the time," and witness replied: "I do not want to"; that Gatmaitan was then carrying a shot-gun and went with Arcilla to the end of the lot of Yuson, and thereupon witness heard a shot fired, followed by several others.

The complete affidavit of Figueroa is as follows (Rec., p. 203):

"I, Lucas Figueroa, 26 years of age, married, a native and resident of Gapan, of the Province of Nueva Ecija, under oath, spontaneously and without compulsion, state as follows:

"That I know Juan Gatmaitan and Mateo Arcilla, residents of said municipality of Gapan, Province of Nueva Ecija; that one night, after the passage of the train, about a month before the murder of Eusebio Yuson, a resident of said municipality of Gapan, I and Juan Gatmaitan were coming from the house of Antonio Abad and being in the street the aforesaid Juan Gatmaitan said to me 'there is some good business'; and I asked him 'What is it,' and he said '*Francisco Amante will pay one thousand pesos to the one who murders Eusebio Yuson.*' On Sunday night and some moments before the murder of Eusebio Yuson, who was coming from the house of the aforesaid Antonio Abad, whose tenant I am, I, in front of a small acasia tree close to the house of Eusebio Yuson, met Juan Gatmaitan accompanied by Mateo Arcilla, and I said to him 'friend' and he answered

me immediately, saying 'now is the time' and I then said, 'I do not want to, because I am afraid' and continued my walk toward the eastern part of the street and, Juan, who carried a shotgun, went with Mateo Arcilla to the end of the lot of Eusebio Yuson; that when I was in front of the Protestant chapel in the barrio of San Lorenzo I heard a shot followed by several others; that Juan Gatmaitan wore a pale red shirt and black pants and a black hat and Mateo Arcilla wore a white hat, a white shirt and red stripes, I not having noticed what pants he wore.

"In witness whereof, and being unable to write or sign my name, I affix my thumb print between my name and surname.

(Sgd.) LUCAS FIGUEROA (Thumb Print).

Some short time after this, a formal charge of murder was filed against Figueroa and against Arcilla and Gatmaitan, who, meanwhile had been arrested; and this charge also included Francisco Amante and Emilio Valdez, defendants below. On the same day this charge was filed, the parties were arraigned before Morales, a Justice of the Peace. On the same day, and before the charge and the arraignment and before Valdez was arrested, (Rec., p. 191), Figueroa signed an *amendment* to his former affidavit in which, *for the first time, he mentioned the name of Emilio Valdez.* The amendment was, in substance, as follows: (Rec., p. 204) That in addition to Gatmaitan saying that *Francisco Amante* had offered a thousand pesos to the one who would murder Yuson, Gatmaitan said that *Emilio Valdez* also had promised a thousand pesos for the same work. This was all his story.

On the arraignment, Figueroa, Gatmaitan and Arcilla had the information translated and read to them and being fully informed *pleaded guilty to the charge of murder* (Rec., p. 203).

Gatmaitan's First Story.

On the day of the arraignment or hearing, Gatmaitan also signed, by thumb-mark, an affidavit, apparently embodying his statement before the magistrate. It is shown in the record (Rec., pp. 237, 239) that Gatmaitan, Arcilla and Figueroa had conferred, and they were evidently present together at the hearing before the magistrate. Gatmaitan, it may be fairly assumed from the record, knew the story that Figueroa had told, and also his amendment.

Gatmaitan's story in his affidavit before the Justice of the Peace, was, in substance, as follows (Rec., p. 205): That Emilio Valdez had requested him to kill Eusebio Yuson, promising him a reward of 900 pesos, and after many requests, witness had consented; that on the morning of the murder, witness, Arcilla and *Amante* were in the house of Valdez, and Valdez said that on that day they would commit the act; that in the afternoon of that day witness and Arcilla returned and secured from Valdez a shot-gun belonging to *Amante*, and when it became dark they (witness and *Arcilla*) went to the house of Yuson, concealing themselves near the stairs leading to the open veranda, and when Yuson arrived witness discharged both barrels of the shot-gun at him, and then ran to the house of Valdez and returned the shot-gun to him; and, further, that on going to the house of Yuson to commit the murder, they met Figueroa on the street and told him they were going to shoot Yuson with a shot-gun.

This was the first story of Gatmaitan. It recounted, in as much detail as any other story subsequently told by him, his actions on the day of the murder of Valdez.

Gatmaitan's explanation of this story is found on pages 229, 230 of the Record. There he says in an affidavit that he was arrested in May by the constabulary and taken to

Cabanatuan prison and was questioned by a lieutenant and some soldiers, in regard to the death of Yuson. They made him confess that he and Valdez were the ones who killed Yuson; that he was reluctant to so state because it was not the truth and that they mistreated him for sometime and, finally, he made the confession referred to, after having been threatened with being shot, and that by reason of his fear he made the statement; that the statement or affidavit was prepared by Buencamino (counsel employed by the widow of the deceased to assist in the prosecution) and that Buencamino, as well as Arcilla and Figueroa, showed witness what he was to state, and that witness was promised that he would not be abandoned and could be freed and that he would be given a reward after the trial.

The statement of Gatmaitan that Buencamino prepared the first affidavit is confirmed by an affidavit of Buencamino himself, signed August 1, 1912, in which he says that he "personally drew up and wrote the affidavit" of Gatmaitan referred to. (Rec., p. 239.)

Some further explanation of this story was made by Gatmaitan on the witness-stand at the trial of Valdez and Amante before the Court of First Instance (Rec., p. 197). Referring to the affidavit, he said:

"They were questioning me and I responded with the word 'Yes,' because they were asking me questions after questions, and I was replying 'Yes.'"

Gatmaitan's Second Story.

The second story of Gatmaitan was told in the trial of Valdez and Amante before the Court of First Instance. It is found on pages 8 to 25 of the Record. This story was in answer to questions through the intervention of an interpreter. It was, in substance, as follows:

That the witness met Valdez for the first time in a cane-field, and that Valdez said that he wished to win witness' friendship, and that was all, and they parted; that the next time he saw Valdez was in a seed-field and Valdez offered him a "business" which was that he should kill Eusebio Yuson, for which he would be paid 900 pesos, and witness replied that he "*could not please him because I was very busy with my work, and no one could relieve me of said work*"; that the next time he saw Valdez on the street and that "he only asked me why I retired," and he also saw Lucas Figueroa at that time and saw Valdez give him some bank-note; that he saw Valdez again on the Sunday of the murder and Valdez invited witness to take a walk, and they went to Valdez' house, and Valdez gave him a shot-gun and together they went to the house of Yuson and on the way talked with Lucas Figueroa and Figueroa told them that Yuson had arrived, and they both stood at the fence near the staircase to Yuson's house and Valdez ordered witness to shoot and witness tried, but not knowing how to use a gun the gun would not fire, and Valdez was showing witness how to shoot when the gun went off and Yuson was struck; that while they were waiting for Yuson they heard the voice of Arcilla, and that after the shot was fired witness ran away leaving the gun with Valdez.

In considering this extraordinary story of Gatmaitan in which he implicated himself in the assassination of Yuson, stating, however, that he did not actually fire the shot, it must be remembered that he had already, while in jail, signed an affidavit prepared and written for him admitting his participation in the crime, under circumstances which he later stated, to have amounted to coercion. There must also be borne in mind the understanding, or lack of understanding of the witness as to the

effect of the confession which he was making. On this subject the witness testified at some length at pages 11, to 13 of the Record, and while his answers to some questions seem to indicate that he might realize he was subjecting himself to punishment by his statements, his answers to other questions show that he did not understand. For example, when he was asked whether he knew that if he stated he had "killed that man" the penalty of the law would be imposed upon him, he answered "No, sir"; and when asked whether he thought it was possible that a promise of the constabulary soldier or chief or clerk, could exempt him from the penalty, he answered at first: "No"; and afterwards: "*I cannot answer those questions. I do not understand them.*"

Gatmaitan's explanation of this second story is found on page 229 of the Record. In an affidavit signed July 17, 1912, already referred to, he says that he did not speak the truth before the Court but followed largely his first story and the reason was that he knew he was "*Yet in the power of the constabulary.*"

Gatmaitan's Third Story.

At pages 229, 230 of the Record, appears Gatmaitan's third story. This statement was made in the guard-room of the prison in the presence of several policemen, and of two other witnesses, and other persons present, and after signing the same he stated that he was resolved to maintain the statement because it was the only truthful one (Rec., p. 231).

This statement was, in substance, as follows: That the actual truth is that witness did not fully know the circumstances in regard to the death of Yuson, nor did witness know who killed him; and that he did not state the truth before the Court of First Instance. This statement fur-

ther contained the explanation of his previous stories heretofore referred to: First, that he had been compelled by the guard to sign the first affidavit; and, second, that his testimony on the witness-stand was induced by the belief that he was still in the power of the constabulary and by reason of his fear.

Gatmaitan's Fourth Story.

On July 26, 1912, Gatmaitan signed another affidavit found on page 235 of the Record. In this he said that both of his earlier stories, that is, the one before the Justice at the arraignment, and the one before the Court of First Instance, were true, and that he did not receive any instructions and that he had not been maltreated by the soldiers in the barracks.

Gatmaitan's Fifth and Last Story.

The final story of Gatmaitan was told on the witness-stand in October, 1912. Here, again, he was subjected to cross-examination. The detailed account which Gatmaitan gave in this testimony is not before the Court, since it is contained in another record, but sufficient appears in the opinion of the Supreme Court of the Philippine Islands in the present case to indicate that Gatmaitan related, in detail, his actions on the day of the murder, supplying a complete account of his movements; and that he testified at length as to the circumstances of his forced confession in the first affidavit and at the trial of Valdez (Rec., pp. 292, 293).

He related that in the early evening of the Sunday on which the murder took place, he had gone to the house of one Aquino, which was a resort for gambling, and the names of a number of persons who were there at the time were given. He stated that he left Aquino's house at

eight o'clock in the evening and that the playing was still going on at that time. He also told the circumstances of his imprisonment, and the influence brought to bear upon him to make some statement that would throw light on the crime, and the suggestions of Arcilla and Figueroa when the conspiracy was hatched to implicate Valdez, as to what this story should be.

There can be no doubt from a reading of the opinion, even if we are not permitted to refer to the testimony of record in the other trial, that the final story which Gatmaitan told was as ingenious, if that expression can be used, as was the one told at the Valdez trial, or in the various affidavits, and had as much detail, and was just as consistent.

Thus this witness, an admitted perjurer, whose testimony (though not believed by the Court) was, nevertheless, the foundation for condemning Emilio Valdez to death, told five different and inconsistent stories under oath; first, the story written out for him by special counsel employed by the widow of the deceased, in which he stated that *he and Mateo Arcilla* waylaid Yuson and shot him; the second, in which he said that *he and Valdez* went together to Yuson's house and Valdez actually fired the shot; the third, that after he had been arrested he had been forced by threats to make a statement throwing light upon the murder of Yuson, and that at the suggestion of others, including Arcilla and Figueroa, he had concocted the story implicating Valdez; the fourth, in which he denied any mistreatment or threats while confined in the barracks; and the fifth, in which he gave a complete account of his movements and acts on the day of the murder, setting forth that he was not at the scene of the crime at all.

In considering these various stories, the dense ignorance, the lack of knowledge of responsibility for the crime on the part of the witness, must be kept in mind.

It must be further remembered that so far as the theory of "invention" is concerned, it was only necessary for Gatmaitan to *invent* that part of the story which merely gave the name of the person who had offered him the money to commit the crime. Figueroa had first suggested the name of Amante, and afterwards added that of Valdez. Gatmaitan adopted the name of Valdez as the corrupt promiser of 900 pesos. No art or genius was required for this mere substitution of names. If all the *acts* occurred which Gatmaitan recited on the witness-stand, except the participation of Valdez, it was only necessary to substitute the mere name of Valdez as the one who accompanied the witness to the scene of the murder, for the name of *Arcilla*, whom the witness had first stated was the one accompanying him. There was no genius displayed in this substitution. A reason for the ridiculous story, that some one leaned over Gatmaitan's shoulder and pulled the trigger, as a substitution for his previous admission that he had fired the shot himself, is found in Gatmaitan's attempt, after he had made his first affidavit, to excuse himself by saying that though he had done some wrong, the shot had actually been fired by some one else (Rec., p. 292). No doubt, in his ignorance, as shown by his lack of understanding of responsibility in the questions put to him on his examination, as well as by his general character shown in the Record, he thought he might thus escape the penalty of actual murder.

A word as to the evidence for the defense: After the assassination of Yuson no suspicion attached to Valdez, and he was not arrested until mentioned, for the first time on the 28th of May, by Figueroa (Rec., p. 191). The murder of Yuson took place a little after seven o'clock on Sunday evening. It was conceded that Valdez was at the house of Guillerma Liaug until after five o'clock of the

afternoon in question. Valdez himself testified that he remained at this house until a few minutes prior to the time that he heard the shots, at which time he was in his own house (Rec., p. 163). In this he was corroborated by Miguel Liaug (Rec., p. 133) with whom he had been visiting at Guillerma's house; by Gil Abad (Rec., p. 126), who saw him at the Liaug house shortly before the reports of the shots were heard; and by Antonio Liaug (Rec., p. 151), who saw and spoke with him while there between six and seven o'clock, and called on him at his own, that is, Valdez' house, a few minutes prior to the shooting. The testimony of these witnesses was explicit, full of details and devoid of unnatural or peculiar incidents. There was not the slightest reason for doubting their truthfulness save that the facts related were inconsistent with the remarkable account of the three witnesses, Gatmaitan, Arcilla and Figueroa.

In addition to the testimony referred to above, Domingo, a servant at the Valdez house, testified that Valdez was in the house at the time the shots were heard (Rec., p. 170).

In the testimony for the prosecution it was shown, and admitted, that Valdez was seen in his own house by the sergeant of police within ten minutes after the shooting occurred. Further, notwithstanding the whole town was alarmed and policemen were on the street, and the entire population on the alert when the firing of four shots was heard in the neighborhood, yet not one individual was found who claims to have seen Valdez going away from the Yuson house to his own house after the murder was committed.

There was one incident related in the testimony for the prosecution that remained without any reasonable explanation. According to the story of Gatmaitan, only one

shot was fired at Yuson. Yet a number of witnesses testified to hearing four or more shots in quick succession. The three remaining shots are accounted for by the prosecution in this fashion: One Candido Garcia, a nephew of the deceased Yuson and who lived in the next house, stated on the witness-stand that on the night of the murder, immediately after hearing the shot fired, and some one calling, *he fired three shots out of the window from a shot-gun*. On cross-examination he testified that the shot-gun would hold five shots but had only four cartridges in it at the time, of which he had fired three, leaving one remaining.

This was substantially all the facts testified to by Garcia.

No Motive for the Crime Attributed to Valdez.

One of the striking features of the opinion of the majority of the Supreme Court, was the statement that (Rec., p. 298):

"Valdez resolved to rid himself once and for all of his *hated enemy* by having him done to death."

In this broad and sweeping language the Court supplied a *motive for the crime* which the evidence had entirely failed to indicate.

Not only was this point of "enmity" not shown by any substantial evidence whatever, but it was abundantly disproved by the testimony of the defense. As before stated, Valdez was one of the prominent citizens of the town in which he lived, a recognized leader of one of the political parties and a member of one of the most influential families in the community. The testimony showed, without dispute, that the deceased and his family and the mother of the accused, were on friendly terms (Rec., p. 145), and that only a short while prior to the murder the

accused and the deceased were together at an entertainment and had shaken hands upon meeting and sat down and talked together. And this testimony was undisputed (Rec., p. 145). A strained attempt to show any basis for feeling between the two men was the introduction of some court records showing that *five years* before the murder, there had been a law-suit between them about boundary lines which had been amicably adjusted by a satisfactory settlement, in January, 1908, and the introduction of a statement of a laborer that he had seen Valdez, Amante and Yuson talking together on their property about a ditch which had been closed, and that Yuson had said something about a law-suit if the ditch were interfered with, and thereupon the parties departed without any altercation whatever, the witness claiming that after Yuson left, he heard Valdez say: "We shall leave, and another time our day will come."

According to the witness, there was nothing further said, nor was there the slightest light thrown on the meaning of this sentence, nor anything to indicate that it was intended in any way as a threat. This all happened more than *three years before the murder*, or, as the witness expressed it: "This is the third rainy season since the event happened." (Rec., p. 104.)

There was another bit of testimony of an indefinite character in which a brother-in-law of Yuson stated that when he walked along the street with Yuson, and they met Valdez (though on what occasions, and at what times, he did not state) he did not observe that Valdez and Yuson spoke (Rec., pp. 101, 102), but he did not pretend that in all his acquaintance with Yuson he had ever heard Yuson refer to any enmity of Valdez (Rec., pp. 101, 102).

There was no real or substantial evidence of any motive inducing Valdez to kill Yuson, or to employ some one else

to kill him. As to the alleged disputes some three to five years before, these were not entitled to any serious consideration, as shown by the very opinion of the majority of the court below, for the same evidence to support any suggestion of ill-feeling between Valdez and Yuson, applied with equal force to Francisco Amante, as pointed out by the Court at page 291 of the Record, and yet the majority said that any presumption of enmity of Amante drawn from such evidence, was overcome by "the stronger one of the presumption of innocence" a presumption which, curiously enough, the Court seemed to think *would not apply to Valdez at all*, for it was not once mentioned in the entire discussion of the question of his guilt or innocence.

In this connection attention should be called to one sentence in the opinion of the majority of the Court. With reference to Amante, it is said that "Amante denied knowing that Valdez would use, or intended to use, the shot-gun to commit any crime." This sentence suggests that Amante conceded that the gun was taken or sent to Valdez on the Saturday night before the murder but denied that he knew the purpose for which it was to be used. Such inference, which would seem to be left by the statement in the opinion, is directly contrary to the evidence. Amante neither denied nor affirmed any knowledge as to the use that was to be made of his shot-gun. What he did deny was that the shot-gun had been taken by him or anyone else to the house of Valdez on Saturday night, and affirmed positively that it remained in the warehouse where he himself was sleeping on the Saturday night in question (Rec., p. 159).

"Q. Where was the shot-gun when you set out from the seed-field for Manila? (that is, on Sunday, the day of the murder). A. It was in the warehouse.

"Q. Where did you sleep the preceding night? A. On the thrashing floor.

"Q. Where was the shot-gun that Saturday night? A. In the warehouse."

The Motive for the Conspiracy to Implicate Valdez.

On the other hand, there is revealed in the Record without a doubt, a motive for the conspiracy, if such existed, to bring in the name of Emilio Valdez as the real murderer of Eusebio Yuson.

It is impossible to read all the statements, affidavits, and testimony of the three witnesses, Figueroa, Arcilla, and Gatmaitan, without realizing that these ignorant Filipinos thought, even after they were arraigned and charged with murder, that they might somehow escape if they could implicate some man of prominence in the community as the one who was the instigator of the crime. All were impressed with the influence in the community of Emilio Valdez, who was a leader of one of the political parties (Rec., p. 190).

The majority of the Court itself not only did not believe these three conspirators were telling the truth on the witness-stand, but conceded that their whole testimony was inspired by the hope of saving themselves notwithstanding their confession of guilt.

Said the majority of the Court (Rec., p. 296):

"We do not for one moment believe that the admissions and confessions of these informers were the result of a guilty conscience, compelling them, when stricken by remorse, to speak the truth."

And the Court added that "they evidently believed they could not hope to conceal the fact that they had some guilty connection with the crime" and their confessions and testimony were inspired by the hope that they might

in some way "save their own necks" notwithstanding their admissions (Rec., p. 296).

This much is conceded. And yet upon their *mere substitution* of the *name* of Valdez for Amante in one instance, and of Valdez for Arcilla in another (both stories being emphatically denied under oath later), the whole foundation for the conviction of Valdez rested. And this on the one theory that such testimony could not be invented!

The object and purpose of these three conspirators, when caught and charged with the crime, in implicating *a fourth person* is clearly suggested, taking into consideration their low character and ignorance of the law. And that they were *capable* of fabricating and did fabricate testimony in the location of individuals at certain places in their conspiracy, *is conceded*. For it is admitted that they *falsely* brought in the name of *Amante* as the one who promised to pay for killing Yuson and as one who was present when the killing was planned, and that they *falsely* located Arcilla as one of the two who stood together when the fatal shot was fired.

After the commission of the murder and a long investigation by the police, the three worthless characters living in the immediate neighborhood were arrested. Figueroa and Arcilla were the first to be apprehended, and immediately afterwards Gatmaitan was taken.

After some little time in prison, and many talks with the guards, Figueroa made a sworn statement in which he implicated Gatmaitan and Arcilla in the conspiracy to murder Yuson, and pointed to Francisco Amante as the instigator of the crime, and as the man who had offered a reward for its commission. Three days later, Figueroa in another sworn statement, amending the first, added the name of Emilio Valdez (Rec., p. 204). Then,

for the first time, was there any suspicion attached to Valdez.

At page 191 of the Record in the case at bar, Figueroa testified as follows:

Q. When was Emilio Valdez arrested? A. *When I mentioned him.*

The same day Figueroa, Arcilla and Gatmaitan were charged with murder and arraigned *and pleaded guilty.* (Rec., p. 203).

What was their motive, or what could they hope to gain, by bringing in the name of a fourth man as a party to the crime? How could they hope to escape punishment, and what foundation was there for the belief that, by bringing in the name of Valdez, they might in some way protect themselves?

It is not necessary, in answering these questions, to rely entirely upon the sworn statement made after the trial by both Arcilla and Gatmaitan to the effect that their alleged confession had been extorted from them not only by threats but by a promise of protection, if they made it, (Rec., pp. 229, 279), for we have in the testimony in the very trial here for review, given at the same moment as was the account of the alleged participation of Valdez, the following questions and answers of Figueroa, the chief of the conspirators (Rec., pp. 191, 192):

Cross-examination by Mr. Southworth: * * *

"Q. When did you see Emilio Valdez for the first time after you had signed the sworn statement?

A. I saw him when we were being questioned in Gapan on the occasion when Emilio Valdez was made a prisoner. * * *

"Q. When was Emilio Valdez arrested? A. When I mentioned him. * * *

"Q. What did they (the constabulary) say to you to make you believe you were safe in testifying against Emilio Valdez? A. He (referring to the constabulary) told me that if anything unfortunate happened they would pardon me, and look out for me. * * *

"Q. There (at San Ysidro) the constabulary stated to you that if you would testify against Emilio Valdez you would not be molested in this case? A. Yes, sir."

That the expectation of these three conspirators that they might escape by the means which they had adopted, was not entirely unfounded, is shown by the Record. Notwithstanding at the arraignment before the Justice of the Peace they had pleaded guilty to murder, Arcilla went free, Figueroa was never prosecuted, and Gatmaitan, though he was finally charged again with murder and tried, protested, when confined, that the officers had gone back on their promise (Rec., p. 231).

It is not necessary to conclude there was some improper conduct on the part of the members of the constabulary in order to see the true significance of the situation here presented. It is sufficient to show that, in the minds of these ignorant men, there was a firm belief that they might save their own necks by the conspiracy and the story which they concocted.

Theory of the Majority of the Court Below.

We have discussed at some length several features of the testimony in this case, because it was necessary to an understanding of the importance, in the determination of the question before the Court, of the theory, or "law of human conduct," adopted by the majority as the foundation for its conclusions.

Of the five stories of Gatmaitan, without whose testimony there was no foundation for convicting Valdez, the

majority of the court below *selected the incidents related in the second account as those which actually happened, not because the witnesses were believed under oath, but on the theory that an ignorant man could not have invented or been instructed to tell the story.* In other words, the witnesses who testified against Valdez were not believed to be telling the truth but the majority, nevertheless, having before it the account given in the second story, accepted it on the theory that an ignorant man could not invent or be coached to tell it.

Whatever may be said of this theory in the abstract, it is completely refuted by the facts in the case at bar.

The assumption that a witness could not invent such a story as he told is completely destroyed when it involves the further assumption that the same witness *did* invent another such story, inconsistent with the first. If it was an "impossibility" for the ignorant Gatmaitan to invent the story that Valdez instead of Arcilla accompanied him to the scene of the crime, why was it not also impossible for him to invent the first detailed story to the effect that it was Arcilla who stood with him when the shot was fired, or the third story as to the circumstances of his alleged confession, and the promise of immunity, or the fifth story containing the long account of his doings on the day of the murder, which had to and did fit in with the corroborating testimony of a number of witnesses?

The theory of the majority is not only contrary to the facts in record but it is improper in any criminal case for in its essence it is that the guilt of the defendant is more likely than the invention of some particular story by an ignorant perjurer. This is manifestly *conviction by probabilities*, and it is utterly contrary to the doctrine well settled in Anglo-Saxon jurisprudence, that an accused is

presumed to be innocent until his guilt is shown beyond a reasonable doubt. (*Coffin v. U. S.*, 156 U. S. 432.)

That the Court completely ignored the presumption of innocence as evidence in favor of the accused is shown not alone by the theory of probabilities, above referred to, and the failure to mention at any place in the opinion with reference to Valdez such presumption of innocence but by the affirmative statements made by the Court as to the evidence for the defense, upon which it rested in determining that branch of the case. The Court in effect took the position that the evidence of the defense, without taking into consideration the presumption of innocence, *failed to prove* the innocence of the defendant. At page 285, the Court states, adopting the opinion of the Court of First Instance:

"Emilio Valdez offered *no serious defense* in his behalf. He *merely* produced the evidence tending to prove 1: The impossibility of having caused the death of Yuson with Francisco Amante's gun because this weapon was in the hacienda warehouse during the night of Saturday, March 16, and for some days thereafter, and 2: an alibi, the impossibility of Valdez having committed the crime because on the date of its commission he was" (at another place).

Again on page 286:

"So then, the evidence of the defense *does not prove* Valdez' innocence."

This is clearly an erroneous view of the law, and it is fundamental in this case. Valdez did not merely have in his favor the evidence of witnesses showing he was not present at the scene of the crime, and that he did not, and could not have used the gun with which the crime was committed. In addition, there was in the case the

important evidence resulting from the presumption of innocence. The language of this Court in *Coffin v. U. S.*, 156 U. S. 432, is pertinent here. In that case the Court said:

"[The theory in a charge which is substantially that] it was incumbent on the accused to show the lawfulness of their acts, was not merely verbal but was fundamental, especially when considered in connection with the failure to state the presumption of innocence."

If the theory upon which Valdez was convicted had been embodied in instructions to a jury any reviewing court would have set aside the verdict for error in the instructions. If any jury had brought in a special verdict saying "we do not believe the one witness for the prosecution who testified to the acts of murder, but we find the defendant guilty because we believe it is more probable that he is guilty than that such an ignorant man could have invented the story," no such verdict would have stood.

The majority of the court was driven to the position that the three witnesses in question did not tell the truth on the witness stand and could not be believed, for otherwise, Francisco Amante, who was also on trial, could not have been held guiltless of the murder of Yuson. The ignorant conspirators had sworn not only that Amante's gun was the one that had been used in killing Yuson, and that Amante had sent that gun to Valdez' house for such purpose, exacting silence on the subject from all who knew about it, and that Amante was present in Valdez' house with Gatmaitan when the murder was planned (Rec., p. 205), but that Amante also had promised to pay Gatmaitan 1000 pesos to murder Yuson; and it was

also shown that Amante, too, had once been "at outs" with Yuson. (Rec., p. 291).

And yet the majority of the Court concurred in the finding that Amante was not guilty because it did not believe the miserable perjurers who testified against him—because "against such *presumptions we have the stronger one of this defendant's innocence.*" The majority thus made a clear distinction between Amante and Valdez; as to one, the doctrine of the presumption of innocence was applied; as to the other, the doctrine of the presumption of innocence was completely ignored—with the addition that the doctrine "*falsus in uno, falsus in omnibus*" was also ignored.

"The Courts are bound," says Mr. Justice Story in 7 Wheat. 283, 339, "upon principles of law and morality and justice to apply the maxim, *falsus in uno, falsus in omnibus.* What ground of judicial belief can there be left when the party has shown such gross insensibility to the difference between right and wrong, between truth and falsity."

This case was tried by a court without a jury, and it was retried upon the entire record in the Supreme Court of the Philippine Islands for the purpose of determining the guilt or innocence of the accused.

The theory which the majority of the Court adopted and upon which it professedly rested as its guide in deciding the issue, was contrary to "the ordinary laws that govern human conduct" (*Atlantic Works v. Brady*, 107 U. S. 192, 193) and was not only unsupported by the evidence but was contradicted by the facts in the record.

Of the judges of the Supreme Court, who decided this case (C. S. Arellano, Florentino Torres, Manuel Araullo,

A. C. Carson, Moreland, and Grant T. Trent) the following is the statement of two of them:

"Moreland, J., dissenting:

"I dissent. I think that the least that the accused is entitled to under the facts and the law is a new trial. I believe, however, that he is entitled to an acquittal on the facts as presented."

"I dissent, on the ground that, in my opinion, the prosecution has not proved the guilt of the appellants of the crime of which they were convicted.

"(Signed) Grant T. Trent."

It is respectfully submitted that the court below erred in taking a view of the premises in a case in which the defendant was on trial for murder, without the presence of the accused, and that there is no evidence in the record to warrant the conviction, and therefore that the judgment below should be reversed and a new trial granted.

Respectfully submitted.

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CHALLEN B. ELLIS,
Of Counsel for Plaintiff in Error.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1916.

No. 361.

EMILIO VALDEZ, *Plaintiff in Error*,
v.
THE UNITED STATES.

In Error to the Supreme Court of the Philippine
Islands.

REPLY BRIEF FOR PLAINTIFF IN ERROR.

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Erroneous Theories Upon Which the Evidence Was
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I.

THE THEORY OF PROBABILITY OF HUMAN CONDUCT
ADOPTED BY THE MAJORITY OF THE COURT BELOW.

Emilio Valdez, whose conviction of the crime of murder
by the Supreme Court of the Philippine Islands is sought
to be set aside in this proceeding, was, at the time of his

trial, a prominent and well-to-do citizen of the Philippine Islands. He was a man of intelligence and standing in the community in which he lived, and was a leader of one of the active political parties in the islands.

When the three Filipinos, Juan Gatmaitan, Mateo Arcilla and Lucas Figueroa, were arrested for the murder of Eusebio Yuson no one thought of charging Emilio Valdez with the crime. Gatmaitan, Arcilla and Figueroa were Filipinos of the most ignorant and degraded type. One of them was a known Carabao thief who had been convicted, and all of them had the most meager knowledge even of their own Tagolog dialect, and none of Spanish or English. Some time after their incarceration an attorney (Buen-camino) was employed by the widow of the murdered Yuson to assist the Government in the prosecution of the murderers. Shortly after this the three Filipinos were questioned either by the guard or by the attorneys, and made certain statements about the killing of Yuson. When formally charged with the crime these statements were reduced to writing in the form of affidavits, and they implicated, first, Francisco Amante and later Emilio Valdez as persons who had bribed them to commit the murder. They pleaded guilty to the charge of the crime, although only one of them was ever prosecuted.

Later, when Emilio Valdez was brought to trial these three ignorant Filipinos told, by means of an interpreter, a story so unlikely and absurd on its face, that neither the court which heard the witnesses nor the reviewing court, could put any faith whatever in it on the ground of the veracity of the witnesses.

They were no doubt at the scene of the crime on the night of the murder, but the account which they gave in an effort to implicate a man of standing in the community, Emilio Valdez, was nothing less than ridiculous. They

claimed that Valdez had casually met one of them one afternoon in a seed field, and immediately offered him 900 pesos to murder Eusebio Yuson—without taking any precautions of any kind, without any knowledge of the individual with whom he was dealing, and without giving any reason for the deed; that at another time he offered another of these conspirators 1,000 pesos to commit the same deed, which the witness claimed was refused, because the witness was afraid—withstanding he confessed to having participated in the deed; that he also bribed a third to stand and watch for the arrival of the man to be murdered; that notwithstanding this bold and incautious effort to bribe witnesses right and left to commit murder for him, Valdez took no advantage whatever of any opportunity to escape the consequence of the crime by having others commit it for him, but proceeded himself with the murderers to the scene of the crime, laid in wait for the victim, and actually pulled the trigger of the gun that did him to death—this last idea, no doubt, originating in the mind of Gatmaitan with the thought that in some way, even though he had gone so far in his confession, he might still escape death if he showed that not he but some one else had actually fired the gun that did Yuson to death.

The statements of these self-confessed murderers and admitted conspirators were so plainly concocted and so palpably inspired with the idea these ignorant men had that they might, in some way, secure immunity, that the court could not believe they were telling the truth. "We do not for one moment believe," said the court, "that the admissions and confessions of these informers were the result of guilty conscience compelling them to speak the truth." If Valdez was to be held guilty of murder it was not to be on the ground that the witnesses whose testimony had implicated him were worthy of belief under oath. It must

be, as the court reasoned, upon some other theory of probability that would indicate that Valdez actually did take part. The court did adopt such other theory; and it was, in substance, as expressed over and over again in the opinion, that the drama recounted by these ignorant witnesses must have occurred, for otherwise men of such ignorance could not have related the details of such a story. Upon the question of the ability of these men to invent the particular account which they related, turned the question of the guilt or innocence of Valdez; not upon the question of the veracity of the witnesses or the truth of their statements under oath, implicating the defendant.

This is the sum and substance of the theory which the majority of the court below laid down for itself as a basis upon which it proceeded to hold Valdez guilty of murder.

Two of the judges of the Supreme Court of the Philippines could not accept any such theory, on the facts. Judge Grant T. Trent said that, in his opinion, "the prosecution has not proved the guilt of the appellant." The other, Judge Moreland, said that he believed Valdez "is entitled to an acquittal on the facts as presented," and that he thought "the least the accused is entitled to, under the facts and the law, is a new trial."

Counsel for the Government in the brief for the United States objects that we have selected only certain paragraphs from the opinion of the majority of the court below to illustrate the point we are making as to the erroneous theory underlying the decision, and suggest that other paragraphs, which are quoted in the Government's brief, should be added. We ask that the whole opinion be considered. No selected paragraphs can obscure the emphatic statements of the court at various places in the opinion, prefaced with such language as, "We do not for one moment believe," or "We rest this case," etc., by which the

majority of the court sets forth its theory of human conduct referred to. We will, however, deal in another part of this brief with some of the paragraphs to which counsel for the Government calls attention.

The fact remains that this theory of the court runs through the whole opinion, and was the basis upon which it held the evidence of the prosecution, on the whole, to show the guilt of Valdez. This can not be overemphasized. Without this basic theory upon which the evidence was examined, the court would not have held, as it did, that the case for the prosecution showed Valdez's guilt; with this theory it was easy to reach the conclusion on the syllogism: these ignorant men could not have invented the drama; the statements they made implicated Valdez as one of the actors; therefore Valdez must have taken part.

We have pointed out in our principal brief that the theory of the court was not only opposed to the "law of human conduct," but was flatly contradicted by the facts of record, showing that these same men not only were capable of inventing but had invented other stories about this same crime, certainly as plausible as the one which the court considered. Further, as we pointed out, there was no real invention of a drama, no genius necessary to concoct the story, so far as it implicated Emilio Valdez. There was the *mere substitution of a name* of one of the actors, just as there had been in other statements made by the same witnesses, a substitution of names which was shown to be false.

In the statements made by one of these same witnesses at his arraignment he stated that it was *Francisco Amante* who had offered one of them a bribe. At another place, this same witness told a detailed story of the trip to Yuson's house, and then it was *Arcilla*, and not Valdez, who stood at Gatmaitan's shoulder when the fatal shot was

fired. Assume that these three self-confessed murderers themselves *participated in the crime*, and there is no difficulty whatever in their relating the drama—and this takes care of all there could be of merit in the theory of human conduct adopted by the court below. To say that it was impossible for them to substitute the name of Valdez for Amante in the one case and for Arcilla in the other, when they actually had done so, is not even worthy of being called a theory.

Yet the court thought it more probable that the acts relating to Valdez occurred than that the witnesses could have invented the statements. This was deciding a criminal case by determining which of two things was the *more likely* to be the fact; it was deciding guilt in a murder trial on *probability*. This fundamental theory, which the court below laid down for itself, condemns the whole opinion, however elaborately it may have discussed or considered the facts, and we respectfully submit warrants the granting of a new trial.

2. THE LAW OF PRESUMPTION OF INNOCENCE AND REASONABLE DOUBT AS VIEWED BY THE MAJORITY OF THE COURT BELOW.

At page 44 of principal brief for plaintiff in error we quoted from the opinion of the majority of the court below, found on page 286 of the record, as follows:

“So, then, the evidence of the defense *does not prove* Valdez’s innocence.”

We discussed the correctness of this fundamental proposition, contending that it was clearly an erroneous view of the law. Counsel for the Government, at page 15 of brief, concedes that “possibly it might be if it stood alone.” This concession might well be made. It is universally estab-

lished that a defendant in a criminal case is entitled from the beginning of the trial to the end to the presumption of innocence, and it is not the proper test of defendant's evidence to consider whether it *proves* his innocence. The theory of the court below on this subject was especially important in view of the fact that Valdez's evidence necessarily concerned the impossibility of his having committed the crime because of his absence. To test the sufficiency of evidence of an alibi by considering whether or not it *proves innocence* is fundamentally wrong in the administration of the criminal law.

There are numerous cases on the subject in this country. It is sufficient to cite a leading text book on this subject where the authorities are collected. In *Underhill on Criminal Evidence*, second edition, section 152, page 290, it is said:

"But the evidence of the alibi, even though not clear, may, with other facts, raise enough doubt of guilt to acquit. A reasonable doubt that the accused was present at the time and place of the crime is a reasonable doubt of his guilt. Hence, to require the fact of his absence to be fully established and found as a fact by the jury is to disregard all evidence falling short of full proof and to require him to prove the alibi beyond a reasonable doubt. *This is certainly not the law.*"

But counsel for the Government insists that there should be added to the sentence "So then, the evidence of the defense does not prove Valdez's innocence" the next paragraph of the opinion of the court below, in order to make the court's view complete. The paragraph suggested is as follows:

"His salvation must be sought not in his evidence, but in that of the prosecution. If the *evidence of the prosecution* is not conclusive and any reasonable doubt

should arise from *its* insufficiency, Valdez may be favored by the benefit of that doubt; *otherwise it must inevitably be held that he is guilty.*"

We agree with counsel that this paragraph is of the utmost importance in determining the complete conception of the court as to the law of presumption of innocence and reasonable doubt, as applied by the facts in the present case. So erroneous is this view that a conviction founded upon any such misconception ought not to be allowed to stand.

The court, in the paragraph above quoted, took the position that if, *at the conclusion of the testimony for the prosecution*, there was reasonable doubt of the defendant's guilt, he might have the benefit of that doubt, but that if *such testimony* did not raise a doubt the defendant must inevitably be held guilty. This is not the law. If, at the conclusion of the evidence for the prosecution, there is reasonable doubt of the defendant's guilt he must be acquitted. If at such stage of the trial there is no reasonable doubt of the defendant's guilt, he is still entitled to raise such doubt by his own evidence, and if at the conclusion of his own evidence there is reasonable doubt of his guilt, he must be acquitted. *Potter vs. United States*, 155 U. S., 438, 448.

The presumption of innocence and the necessity of proof beyond a reasonable doubt attend the defendant from the beginning of the trial until the end. Even though the evidence of the prosecution makes out a *prima facie* case, even though it overcomes the presumption of innocence, and if the presumption of guilt becomes conclusive at that stage of the trial, yet if the defendant's evidence explains, varies or modifies such testimony in such a way as to throw reasonable doubt on his guilt, the defendant must be acquitted. (*Potter vs. United States, supra.*) This matter of reasonable doubt is not confined to the evidence of the

prosecution. Any such view of the law is vital in a case where the defense is an alibi, and the court's fundamental misconception of the law in this case requires reversal of its judgment.

3. INSTANCES OF FINDINGS OF FACT IN THE OPINION DIRECTLY CONTRARY TO THE EVIDENCE.

Counsel for the Government urges upon the court that the decision in the Supreme Court of the Philippine Islands received a most careful consideration because the matter was pending before that court from March 7, 1914, until March 25, 1915, the appeal having been submitted on the former date, and the decision having been rendered on the latter date, and counsel at a number of places in the brief for the United States refers to the painstaking and exhaustive consideration to be found in the opinion.

We respectfully submit that the value of the opinion is to be judged rather by the soundness of the views expressed, and the accuracy of the findings when applied to the evidence, than by the length of time the case was held by the court before a decision was reached, or the length of the opinion and the subjects covered by it. We have discussed at some length the soundness of the theories announced in the opinion as a basis for the decision reached; in addition to this, there are many instances in the opinion where the findings of fact are directly contrary to the evidence in the record, and these errors occur in the most important parts of the opinion.

(a) As pointed out by counsel for the Government, the majority of the court below did refer to some "corroboration" of the testimony of the three informers or conspirators, Gatmaitan, Arcilla and Figueroa. But an inspection of the next paragraph will show that what the court had in

mind was the alleged *consistency between the stories of the conspirators themselves* rather than any corroboration of their combined account. For example, the court said that the testimony as to the offer of money by Valdez to Gatmaitan was "confirmed" by the testimony of Arcilla, that Valdez offered Arcilla money. Such testimony is neither confirmation nor corroboration, and certainly it is not independent corroboration of the story of the three accomplices.

The only exception to our statement as to what the court evidently referred to in speaking of "corroboration" is found in the mention of the testimony of Victor Robaya and Thomas Diego. It is to be remarked, in the first place, as to Victor Robaya, that the court did not, and could not, have relied upon Robaya's testimony because it concerned an alleged note passing between Valdez and Francisco Amante, and implicated Amante equally with Valdez if it implicated any one; and the court held that Amante was innocent of any participation in the crime.

But further referring to Robaya, the opinion stated that Robaya carried a letter to Amante instructing Amante "to bring his shot-gun to the pueblo"; and the opinion further stated that this letter "*was seen and read by Victor Robaya.*" This is directly contrary to the testimony. Robaya testified that he had carried to Amante a paper which he had not read. He knew nothing about its contents and did not know whether it directed a shot-gun to be brought or not. His testimony on this point is clear and explicit. (Record, pp. 60, 61, 63):

"Q. What letter was that?

"A. I do not know what letter; I only received it from him to deliver it to Francisco Amante."

"Q. And what did you do afterwards with the letter?

"A. I put it in my pocket, but I did not read it."

"Q. And it was written in the Tagalog language, was it not?"

"A. I do not know because I did not read it."

(b) Next, there was mentioned in the opinion the statement about the testimony of Thomas Diego to the effect that this witness "First saw Valdez alone, and a moment later saw him accompanied by another man *who must have been Gatmaitan.*"

There is nothing in the testimony which justifies the inference made by the court in this sentence, and which is of vital importance in the case. Diego did testify that he saw Valdez shortly before the shot was fired. Valdez himself testified that he went to his home shortly before the shot was fired, that is, that he heard the shot just after he had entered his house, and that he had been accompanied to his home by another man who was not Gatmaitan. Diego did not even hint that the man he saw with Valdez was Gatmaitan, but, on the contrary, expressly stated that he did not know who the man was. His testimony is as follows:

"Q. Do you know who the other man was with whom Valdez was talking?"

"A. No, sir."

To draw from this testimony the conclusion that Valdez must then have been accompanied by Gatmaitan, and then to call this corroboration, is a most serious error and negatives any thought of careful and painstaking consideration of the evidence by the majority of the court below.

(c) At another place in the opinion the court dealt with the most important subject of the corroboration of Valdez's testimony as to his alibi.

After rejecting all the testimony of some six or seven witnesses on the ground of interests and bias, *because some of them belonged to the same political party to which Valdez belonged*, one of them being "candidate for president at the last election and in whose behalf the defendant Valdez worked as his principal supporter," the court proceeded to discuss some of the testimony in rebuttal.

The court stated that Joaquin Garcia, witness for the prosecution, testified that at about 5 o'clock in the afternoon of Sunday, when the crime was committed, he saw Valdez "*go out of the door and direct his steps toward the east of the rice-field.*" It must be borne in mind that the prosecution's theory was that at about that time of the day Valdez had met Gatmaitain *in the rice-field*. It was therefore exceedingly important if some outside witness actually saw Valdez go to the rice-field. But nothing of the kind was testified to by this witness. All that Garcia stated was, that he was in the store of Guillerma Liuag buying cigarettes, and that Valdez was there also (as Valdez himself had testified) and the witness saw him leave, and on leaving "he went in a westerly direction." This is substantially every word of the testimony of Liuag that has any bearing on the case. Yet from his testimony the court drew the most important inference, that there was an independent witness to Valdez's alleged journey to the rice-field (Record, p. 173).

(d) Valdez had testified that shortly after the firing of the shots he had called out to the police. The court seemed to think that this testimony was completely rebutted by the statements of several police officers, that these particular officers *did not hear Valdez* call out (Record, p. 286). One of the officers with whom Valdez talked confirmed a conversation with Valdez, although he thought it was at a time later than Valdez had fixed. It is after this discus-

sion that the majority of the court reached the conclusion to which we have heretofore referred, "So then the evidence of the defense does not prove Valdez's innocence."

(e) At page 287 the court referred to the confession made by Gatmaitan, in which, for the first time, he implicated Valdez in the crime as the one who had offered money for its commission. The court's attention had been called to this affidavit made by Gatmaitan as directly in conflict with the testimony he had given on the witness-stand. The court found as a fact that there was no such conflict, making this statement:

"With respect to Gatmaitan's confession, let it be borne in mind *that it in no wise conflicts* with his testimony, for he admits now, as he did before the trial, that he assisted in killing Yuson."

It is necessary only to refer briefly to the testimony and the affidavit to show the glaring conflict.

At page 13 of the record, Gatmaitan, referring to the night of the murder, and his trip to Yuson's house, testified as follows:

"And what did you do when Lieutenant Eusebio Yuson arrived?

"A. Emilio Valdez ordered me to shoot.

"Q. And what did you do?

"A. I tried to shoot but the gun would not go off.

"Q. And then?

"A. He approached me and said * * * he was able to go up already and you won't shoot yet, and he showed me how to shoot, and right at that moment the gun went off."

In his affidavit made at the time he was charged with murder, he recited the incidents that occurred at this precise time and place, as follows:

"When it commenced to get dark we, *I and Mateo* [Arcilla] *went to the house of Eusebio* [Yuson]. We concealed ourselves on the lot of Eusebio, near the stairs leading to the open veranda. Eusebio arrived and *I discharged both barrels of the shot-gun at him at the same time.* I then ran to the house of Emilio, etc."

It is perfectly obvious from the consideration of the testimony in this case that Gatmaitan, in carrying out his plan for escaping punishment in some way, at first thought it was sufficient to say that Valdez had really caused the murder by offering the bribe, but later on he deemed it necessary to make Valdez a participator in the actual shooting, and, in fact, to have him fire the gun. In the story told in the affidavit, Gatmaitan distinctly and clearly stated that *Arcilla* was the one who accompanied him and stood by him when the shot was fired. In the later testimony on the witness-stand Gatmaitan substituted *Valdez* for *Arcilla* in this position and at the time of the happening of the incident. Yet the trial judge, whose opinion was adopted by the majority of the court below, found that there was no conflict whatever between the affidavit made when Gatmaitan was arraigned and charged with murder, and the testimony on the trial when Valdez was being tried for murder.

(f) At page 291 the court, discussing the question of the guilt or innocence of Francisco Amante, who had been implicated in the crime by the three conspirators and described as the one who had taken to Valdez the gun with which the murder was committed, and had been present at the conference in which the murder was planned, stated: "*Amante denied that Valdez would use, or intended to use, the shot-gun to commit any crime.*"

If this was the character to Amante's denial it was exceedingly important in the case, because it would constitute

corroboration of the testimony of the conspirators, that Amante had taken or sent his gun to Valdez.

But no such inference can be drawn from the statements of Amante, and the language of the court is directly contrary to the testimony.

What Amante said was that *he had not sent the gun at all, but it had to his knowledge remained in the warehouse on the night when the conspirators had stated it was sent or taken to Valdez* (Record, p. 159).

(g) At page 295 the majority of the court below made the following statement:

"Counsel for appellants lay great stress on the fact that when Figueroa was first arrested he did not implicate Valdez in his original statement to the police; but we think that the explanation given by him on the witness-stand for his failure to mention the name of Valdez at that time is sufficient, viewing the matter from his standpoint, to account for if not to justify his action in this regard. Valdez had not then been arrested, and Figueroa consulted both his hopes for aid and assistance and his fears of possible vengeance or abandonment in adopting at that time a policy of silence as to Valdez's connection with the crime."

We deem it desirable, as showing the attitude the court took towards the contention of counsel, to repeat here what is apparently the testimony to which the court referred in the above paragraph.

In considering this testimony it must be remembered that on May 25th, after his arrest, Figueroa made an affidavit in which he stated that Gatmaitan had told him that *Francisco Amante* had promised to pay Gatmaitan one thousand pesos for the murder of Yuson. No mention whatever was made of Valdez. On May 28, 1912, Figueroa

signed an amendment to this affidavit, in which amendment he stated that Gatmaitan had said that Francisco Amante and Emilio Valdez were the ones who were to pay him for the murder.

The testimony is as follows:

"Q. Were you not afraid of him on the 28th when you made that sworn statement? A. I was not then afraid because I was at that time under the protection of the Constabulary.

"Q. But were you not with the Constabulary guards on the 21st before making the first sworn statement? A. I do not now remember in view of the fact I have little knowledge regarding dates, so much so that if they were to recall it to me I could not state positively.

"Q. But do you not remember that you were under the protection of the Constabulary on the 25th when you made this first sworn statement? A. I do not remember all of that, but now I am telling the truth.

"Q. On the 25th you did not have sufficient confidence in the Constabulary to testify to that? A. I had confidence in them, but due to the fact that I had much about which to think I could not tell everything.

"Q. But on the 28th they had assured you that you would be safe in testifying against Mr. Emilio Valdez, had they not? A. Well, I have mentioned in my statements about Emilio Valdez.

"Q. On the 28th the Constabulary made you believe that you were safe in testifying against Mr. Emilio Valdez? A. Yes, sir.

"Q. What did they say to you to make you believe that you were safe in testifying against Emilio Valdez? A. He told me that if anything unfortunate happened they would pardon me and look out for me, but I was not placing so much confidence in that, because my thoughts were disturbed.

"Q. When did you have sufficient confidence? A. Since they took me to San Ysidro.

"Q. There the Constabulary stated to you that if you would testify against Emilio Valdez you would not be molested in this case? A. Yes, sir."

These are but a few of the instances in which the majority of the court in its own opinion, or in the opinion of the trial judge adopted by the court, made findings and inferences sometimes directly contradicted by the statements of the witnesses in the record, and at other times unjustified by anything to be found in the testimony. Such being the case, it cannot be said that the opinion evinces a careful and accurate consideration of the facts, but, on the contrary, it must be said that many of the deductions as to matters vital to the decision are wholly without warrant.

II.

Absence of the Accused at the View of the Premises.

1. EVIDENCE TAKEN AT THE VIEW OF THE PREMISES IN THIS PARTICULAR CASE.

As the record shows, the trial court understood that the proceedings at the view of the premises would be "evidence for both parties" (Record, p. 198). Counsel for the accused objected to any testimony of any kind at the view, but counsel for the prosecution urged the court "not to dispense with a task in which the court may exercise its discretion, so that when the court arrives there it may ask of unknown persons where the deceased fell, where the wad was found, where Gatmaitan was, and where Mateo Arcilla was." And thereupon the court stated that he had "no objection to making *that inspection*."

It was undoubtedly the intention of the court to have the various places pointed out, and to locate the various

persons who were alleged to have been present at the scene of the murder.

Eliminating all conflict in the affidavits as to what took place, *it was agreed by both sides that there was this pointing out.* Counsel for the accused so stated in great detail, and counsel for the prosecution admitted that the chief places testified to by the witnesses in the court below were pointed out to the judge, etc. (Record, p. 275). At the same time, however, counsel for the prosecution said there was no taking of "*evidence*," and the Supreme Court of the Philippines found, as counsel for the Government points out, that there was no "*evidence*" taken at the trial.

But this finding is a conclusion of law. Both sides admitted that there was a pointing out of the places to the court by various witnesses. As we have shown in our principal brief, this alone would constitute the taking of evidence. The authorities on this subject are cited on pages 12 and 13 of our principal brief.

On this ground alone, therefore, and aside from the question as to whether the absence of the accused would be error if a view was held without any evidence whatever being taken, the action of the court at this particular view was erroneous.

2. WHEN THE ACCUSED IS IN CUSTODY OR ON TRIAL FOR HIS LIFE HE IS INCAPABLE OF WAIVING THE RIGHT TO BE PRESENT AT ANY STAGE OF THE PROCEEDING.

At the time the view of the premises was taken the accused was in custody and was on trial for his life. He was not consulted about the proposed view of the premises nor asked to consent, and he neither consented nor disagreed, but merely remained silent and was kept in custody when the view was had, although his counsel agreed

to the view with certain limitations which were not carried out.

It is useless, however, to argue the point as to whether the accused by his conduct waived his right to be present at the view, for this court has clearly and distinctly held, as its interpretation of the organic law of the Philippine Islands, that *an accused who is in custody or on trial for his life is incapable of waiving the right to be present at any stage of the proceedings.*

In the case of *Diaz v. United States*, 223 U. S., 442, this court had occasion to interpret the meaning of section 5 of the Philippine Civil Government act and concluded that the right which the constitutional provisions in this country secure to persons accused of crime was the measure of the right carried to the Philippines by the congressional enactment and that therefore the prevailing rule of decisions here should be accepted as determinative of the nature and measure of the right there. This court reviewed the authorities and gave the following ruling as the measure of the rights in the Philippine Organic Law:

"In cases of felony our courts, with substantial accord, have regarded it as extending to every stage of the trial, inclusive of the empanelling of the jury and the reception of the verdict, and as being scarcely less important to the accused than the right of trial itself. And with like accord they have regarded an accused who is in custody and one who is charged with a capital offense as incapable of waiving the right; the one, because his presence or absence is not within his own control; and the other because, in addition to being usually in custody, he is deemed to suffer the constraint naturally incident to an apprehension of the awful penalty that would follow conviction. But, where the offense is not capital and the accused is not in custody, the prevailing rule has been, that if, after the trial has begun in his presence, he voluntarily ab-

sents himself, this does not nullify what has been done or prevent the completion of the trial, but, on the contrary, operates as a waiver of his right to be present, and leaves the court free to proceed with the trial in like manner, and with like effect as if he were present."

This language is clear and distinct and applies to the case at bar. It seems to us unnecessary to review again the authorities on this subject which were carefully considered by this court when it announced the result of the authorities as a basis for its interpretation of the Philippine organic law.

3. THE ARGUMENT THAT A VIEW OF THE PREMISES IS NOT A PART OF A TRIAL.

The language of the court in the *Diaz case, supra*, is broad enough to include every step in the proceedings in a criminal trial, and would seem sufficient to indicate that the rights of the accused extended to such a step in the proceeding as a view of the premises by the court. But counsel for the Government has argued that a view of the premises is not a part of the trial and *therefore* that the accused may waive his *right* to be present.

We respectfully submit that there is confusion in this argument. *The right of an accused* to be present at any given stage of the proceedings and the *ability of the accused to waive* his right are two separate and distinct matters. The right depends upon the character of the proceeding; the ability to waive depends upon the condition of the accused, that is, whether he is in custody and on trial for his life, or is out of custody and on trial for a felony not punishable by death. An accused may have the right to be present and may or may not be able to waive this

right. If he has no right to be present there is nothing to waive.

The real question therefore is whether the accused has a right to be present at a view of the premises. On this question the American authorities with practical unanimity agree that the accused has the *right* to be present. Every case relating to waiver of right to be present at a view of the premises is an authority for the proposition that the accused has a *right* which he may waive.

Having the right to be present he may waive this right and the trial proceed in his absence if he is on trial for a felony not punishable by death; if, however, he is on trial for his life he is incapable of waiving the right.

The argument of counsel for the Government therefore proves too much. For if the view is no part of the trial, the accused has no *right* to be present and there is no right to waive. Yet the very cases cited in support of counsel's position admit the *right*, by discussing its *waiver*.

The arguments for the proposition that the view of the premises is no part of the trial are easily answered, if indeed, they do not answer themselves.

The argument in the case relied upon by the Supreme Court of the Philippine Islands in its opinion is that a view is no part of the trial, for *otherwise no man could be tried for a murder in the courtyard because the jury would be viewing the premises in going to the court-room, and in the absence of the prisoner*. The answer to this is plain. It is only the *formal view* that is claimed to be part of the trial—it is that formal view which may rightfully be taken into consideration by the jury in order to explain, confirm or contradict the evidence—in other words, to form the basis of the verdict along with the testimony. The casual inspection in going to or coming from the court-house can not be used by the jury, and the use of such evidence would

itself be erroneous, and require a setting aside of the verdict. Of course, such unauthorized view is no part of the trial.

The next argument, suggested by Professor Wigmore, is that *there is just as much propriety in claiming that the accused has a right to be present at the deliberation over the verdict, as the claim that he has a right to be present at the view of the premises*. This suggestion adds nothing to the argument. Of course, the deliberation of the jury is in a sense part of the trial, but it is a secret part of the trial by immemorial custom, and no one has a right to be present but the jury—neither the judge nor any officer of the court or counsel.

The next argument is that *the view of the premises is not taking evidence*, and therefore it is no part of the trial. But there are many occurrences which are parts of the trial and yet do not consist in the taking of evidence for or against the accused, as, for example, the preliminary examination of the jurors, the reception of the verdict, etc. But aside from this, by the great weight of authority, a view of the premises is necessarily the taking of evidence.

On this subject Professor Wigmore cited as authority in the brief for the United States, says (section 1168, at page 1372, Wigmore on Evidence) :

“It is *wholly incorrect in principle* to suppose that an autoptic inspection by the tribunal does not supply it with evidence.”

Again,

“The theory that a jury’s view does not involve the obtaining of evidence has come before the courts in many cases involving the propriety of instructions to the jury, and the weight to be accorded by the jurors to witnesses’ testimony; and in spite of some favoring

precedents it has, in most jurisdictions been repudiated."

In spite of the confusion of thought in many of the cases on the subject, the solution of the question does not seem difficult. Keeping distinct the question as to the right of the accused to be present, and the question as to when the accused may waive his right, it is almost universally conceded, as a matter of course, in the well-considered cases, that *the accused has a right to be present, if he so desires*. In those cases in which the trial court has denied the accused the right to be present, after his request, the appellate courts have unhesitatingly reversed the trial court. (For example, *Benton v. State*, 30 Ark., 328.)

It is not generally contended, and we do not believe counsel for the Government means to contend that the accused has no *right* to be present at a view of the premises, although this seems to be Professor Wigmore's suggestion. Professor Wigmore is, however, as an examination of the text will show, in this instance professedly arguing against numerous cases which are cited, and he does not pretend that his suggestion is in accord with the current of authority.

Obviously, as we have before pointed out, the very numerous cases holding that the accused may, under certain circumstances, *wave the right* to be present, constitute authority for the proposition that he has such right to waive.

In the Philippine Islands where the language of the law is not merely that the accused has a *right to be present at the trial* but that he has a right to be present at "*every stage of the proceeding*," there would seem to be hardly any question on this subject.

Having the right to be present, therefore, the question remains as to when an accused is capable of waiving such right. This court, in a careful consideration of the sub-

ject, reviewing the authorities, states that where an accused has the right to be present he may waive such right, if he is not in custody, or on trial for his life, but if in custody or on trial for his life, he is incapable of waiving the right.

So, in conclusion, in the light of the interpretation which this court has given to the organic law of the Philippine Islands, and the doctrine well settled that an accused has a right to be present at a view of the premises regardless of the question as to when and how he may waive such right, it seems to follow inevitably that the absence of the accused at the view of the premises in this case was error requiring reversal.

Respectfully submitted,

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

EMILIO VALDEZ, PLAINTIFF IN ERROR,	}	No. 361.
v.		
THE UNITED STATES.		

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a writ of error to the Supreme Court of the Philippine Islands from a judgment finding the defendant below, Emilio Valdez, guilty of murder and sentencing him to death. That portion of the brief of the plaintiff in error which is devoted to the argument consists of 39 pages, of which 14 pages are given over to the discussion of the legal questions claimed to be involved and the remaining 25 pages to an attempt to show that the evidence submitted was insufficient to warrant the conviction.

Under the circumstances, it seems appropriate to refer briefly to the history of the case and the course of the trials below.

Emilio Valdez, the plaintiff in error, and one Juan Gatmaitan were charged in the court of first instance

below with the murder of Eusebio Yuson on Sunday evening March 17, 1912. They were tried separately and by different judges and each was convicted of the crime charged. Valdez was sentenced to death and Gatmaitan to life imprisonment under the provisions of article 11 of the Philippine Penal Code upon a finding that he was a densely ignorant man of a low order of intelligence and lacking in mental and moral instruction. (Rec. 281.)

The records of the two trials were brought independently before the Supreme Court of the Philippine Islands. As the case for the prosecution against both of the accused rested almost wholly upon the testimony of the same witnesses, the separate appeals to the Supreme Court of the Philippines, at the request of counsel, were heard and considered together in order that in the interests of justice counsel for the defense might make the fullest use of all the evidence in both cases in behalf of both and each of the accused. (Rec. 281.)

As was said by the Supreme Court of the Philippines:

Counsel rightly contended that if the credibility of the material witnesses for the prosecution in either case can be impeached successfully by a critical analysis and comparison of the record in the two cases, the judgment of conviction entered in that case should not be affirmed without first giving the accused an opportunity to take advantage of the weakness thus developed in the testimony upon which he was convicted. (Rec. 281.)

Valdez, the plaintiff in error, was tried first below, Gatmaitan being one of the principal witnesses for the prosecution. Upon the trial of Gatmaitan some time afterwards, his testimony given upon the Valdez trial was used against him. Otherwise the evidence for the prosecution was substantially the same in both cases. Gatmaitan upon his own trial took the stand in his own defense and repudiated his testimony given in the Valdez trial, which was, briefly, that he had been bribed by Valdez to kill Eusebio Yuson, and that the two went together to Yuson's house for the purpose with a shotgun; that as Yuson was ascending the steps of his home he (Gatmaitan) attempted to shoot Yuson but being unfamiliar with firearms could not make the gun go off, whereupon Valdez pulled the trigger as he (Gatmaitan) was holding the shotgun, and thus the murder was consummated. (Rec. 281, 284.)

At the Gatmaitan trial, an attempt was made to cast suspicion upon a nephew of Valdez, Candido Garcia by name. The testimony on this head was most carefully and exhaustively considered and repudiated by the Supreme Court below, who stated:

There is nothing in the testimony of these witnesses which raises any doubt in our minds as to the innocence of Candido Garcia. (Rec. 302.)

And the Court further indicated that it believed the evidence in the Gatmaitan case concerning Candido Garcia was an afterthought resulting from the conviction of Valdez, whose case it characterizes as

"hopeless unless some affirmative evidence could be discovered which would cast suspicion on some one else and thus cast a doubt on the judgment of conviction in his case." (Rec. 300.)

It is also to be noted that upon arraignment at his own trial Gatmaitan made the following statement:

I do not deny that I should be punished, but I can not admit that it was I who fired, but that it was he (referring to Valdez). (Rec. 292.)

Not only was the conviction of Gatmaitan affirmed by the Supreme Court below, but that Court decided that Gatmaitan was not entitled under all the circumstances to have his ignorance and lack of instruction taken into consideration as an extenuating circumstance and modified his sentence of life imprisonment by substituting therefor the death penalty. (Rec. 309.)

That the Supreme Court of the Philippines gave the matter most careful consideration is evident from its minute order of March 26, 1914, the Valdez appeal having been submitted March 7, 1914, and the Gatmaitan appeal January 12, 1914:

The Court not having been able to arrive at an agreement as to the disposition of the appeals in the cases of *United States v. Juan Gatmaitan*, R. G. No. 9021, and *United States v. Emilio Valdez, et al.*, R. G. No. 8185, concluded to postpone further consideration thereof until the July term; and in view of the gravity of the penalty imposed in the court below and of the extensive oral arguments of counsel on

the submission of these cases, the court further resolved to authorize counsel in both cases to extend their oral arguments in writing and submit typewritten copies thereof in English and Spanish, not later than May 15, 1914. (Rec. 280.)

The case was duly submitted but the decision was not handed down until March 25, 1915. (Rec. 280.)

Further and because so much of the appellant's brief is given over to a discussion of the weight of the evidence with particular reference to the credibility of the witnesses for the prosecution, we desire to refer to the following extract from the opinion of the Supreme Court below:

After repeated exhaustive and painstaking examinations of all the evidence in both records, a majority of the court is convinced beyond a reasonable doubt of the guilt of both the appellants. Both of the accused were defended by able and experienced counsel in this Court as well as in the court below. Extended oral arguments and briefs, aggregating some hundreds of pages in length, have been submitted in the course of these proceedings, and we are convinced that nothing which could be brought forward on behalf of the accused has been neglected, and that we have been compelled by their counsel to consider and pass upon every possible argument which could be advanced in support of a claim of reasonable doubt as to their guilt. We can not undertake to discuss every contention which has been put forward by the defense throughout the course of these pro-

ceedings. That would be impracticable and is unnecessary. It must suffice to say in regard to all the contentions of counsel for the defense not specifically dealt with herein, or conclusively controverted in the briefs filed by the Attorney General, that they have been maturely considered and ruled upon adversely after due deliberation and with full recognition of the right of the accused to the benefit of every reasonable doubt. (Rec. 294.)

It seems also proper at this point, as the sole other contention on the appellant's brief appears to be that the trial judge in the Valdez case committed prejudicial error in taking a view of the vicinity where the murder was committed, to quote the finding of the Supreme Court below with respect thereto:

A motion for a new trial, which must be denied, is pending before this Court on the ground that an inspection of the vicinity where the murder was committed was made by the trial judge, in the absence of the defendant, Valdez, who was at the time in the provincial jail. The record clearly discloses that this inspection was made with the consent of counsel for Valdez, and that the trial judge was accompanied to the place where the murder was committed by counsel for both the prosecution and the defense.

Some attempt is made in the affidavits accompanying this motion to show that the trial judge took evidence in the course of this visit of inspection, and that there was an attempt

made by some of the bystanders to influence his judgment and his feelings against the accused. A careful examination of these affidavits and the counteraffidavits filed by the appellee satisfies us that nothing more than inspection of the scene of the murder was made by the trial judge, and that no evidence whatever was taken on that occasion; and we are of opinion that under all the circumstances there was no violation of the constitutional right of the prisoner to be confronted with the witnesses. *People v. Thorn*, 156 N. Y. 286, 42 L. R. A., 368, and the cases cited in the extended note in the annotated report.

Perhaps we should add that if any of the bystanders did in fact do or say anything which had for its object the influencing of the mind or feelings of the trial judge, the permission of such apparently unanticipated, unauthorized, and perhaps unavoidable intervention by these bystanders was at most error without prejudice, and has had no influence one way or the other in the final disposition of the pending proceedings.

We conclude that the findings of the trial court as to the guilt of both these appellants, Valdez and Gatmaitan, are sustained by the evidence of record beyond a reasonable doubt; and we find no error in either of the records brought here on appeal prejudicial to the rights of the accused. (Rec. 308, 309.)

We have therefore at the outset, despite the asseverations of counsel respecting the contradictions, inconsistencies, and improbabilities alleged to be ap-

parent in the testimony for the prosecution, the following undeniable facts:

The plaintiff in error Valdez and his alleged tool and accomplice Gatmaitan were separately tried by different judges for the murder of Eusebio Yuson; the evidence in each case (with the exception of Gatmaitan's change of front on his own trial and the unsuccessful attempt to fix the crime in that trial on Valdez's nephew Candido Garcia—although on the Valdez trial no attempt was made by the defense to save Valdez in this manner) was substantially the same and the corroborating witnesses and testimony as to the surrounding details were practically identical; Valdez was convicted and sentenced to death on his trial; Gatmaitan was convicted and sentenced to life imprisonment on his trial; the Supreme Court of the Philippines considered both appeals together, thus giving every opportunity possible to each defendant that could possibly arise from any discrepancy or weakness in the testimony adduced at each trial; and yet after so carefully and exhaustively considering all the testimony offered on both trials as to practically amount to a retrial of each case, and with a full realization of the gravity of their duty in the matter, four out of the six judges were absolutely convinced that the prosecution had proved its case against each defendant beyond a reasonable doubt. And the court was so firmly convinced of this that it raised Gatmaitan's sentence from life imprisonment to the death penalty.

In other words, after what amounted practically to four separate trials concerning the same crime, inasmuch as the testimony adduced concerning this crime was four times considered and reviewed, with every possible opportunity afforded to the defense by the offer of evidence, by oral and written argument, to explain away or overthrow or discredit the overwhelming testimony of the prosecution, six out of the eight judges who officiated at the various trials were unalterably convinced that Valdez and Gatmaitan committed this crime.

ASSIGNMENTS OF ERROR.

I.

The plaintiff in error offers ten assignments of error which are found in the record at pages 313-315:

Assignments numbered 2, 3, and 4 (Rec. 314) assert that it was a violation of the rights secured to the defendant by Article IV of the Amendments of the Constitution of the United States, and by Section 5 of the Philippine Organic Act, to try him without a preliminary investigation by a magistrate, and on an information signed by the Provincial Fiscal, but not sworn to. These objections, however, were made for the first time on a motion to set aside the judgment of the Supreme Court of the Philippines (Rec. 310). Moreover, the information was read to the defendant, and, without objecting to its form, he pleaded "Not guilty" (Rec. 6, 203); and subsequently he offered it in evidence as part of his case on the merits (Rec. 170, 171, 211). Neither of the matters, therefore, in

assignments of error numbered 2, 3, and 4 can now be considered by this court. *Dowdell v. United States*, 221 U. S. 325, 332. See also *Ocampo v. United States*, 234 U. S. 91, 99-101.

II.

Assignment of error numbered 5 sets up the lack of a presentment by a grand jury, and assignment numbered 6 the fact of a trial not before a petit jury. Both points are concluded by *Dowdell v. United States*, *ubi sup.*

III.

Assignment of error numbered 8 alleges that the affirmance of the judgment was contrary to law, but this is manifestly an inference from the other assignments and must stand or fall with them.

IV.

Assignments of error 1 and 7 allege that the court erred in affirming the sentence below because the latter was in violation of the Philippine Organic Act and of the Sixth Amendment to the United States Constitution in that the trial justice viewed the scene of the crime in the absence of the defendant; and that such proceeding violated the due process provision of the Organic Act and of the Constitution of the United States.

V.

Assignments of error numbered 9 and 10 allege that the Court erred in affirming the judgment because it was against the weight of evidence.

THE ISSUES INVOLVED.

It would seem, however, that the plaintiff in error has abandoned all contentions upon his appeal, save two, which are as follows:

(1) Whether the action of the trial judge in taking a view of the premises constitutes reversible error, and

(2) Whether the evidence given on behalf of the prosecution was sufficient to warrant the judgment of conviction.

ARGUMENT.**I.**

The evidence adduced on the trial clearly warrants the conviction of the plaintiff in error.

We will first consider Point II on the brief of plaintiff in error as to the weight of evidence.

As above shown, the case was originally tried by the court without a jury (as provided by the Philippine law), and the accused was found guilty. On appeal to the Supreme Court of the Philippine Islands which, under the statute, reviews the facts as well as the law, the accused was again found guilty upon the evidence. This was the identical situation in the *Diaz case* (*Diaz v. United States* (1912), 223 U. S. 442,) and this Court there said after stating the fact:

Of course these concurrent findings are entitled to great respect.

It may be, however, that as in the *Diaz case* this Court, following the rule recognized in *Wiborg v. United States*, 163 U. S. (1896) 632, 658, and *Clyatt v. United States* (1905), 197 U. S. 207, 222, will deem

it proper to examine the evidence as set forth in the record and discussed in the opinions of the Philippine Courts.

In this case, the Government, under ordinary circumstances, would have contented itself with relying, so far as the sufficiency of the evidence of guilt is concerned, on the opinion of the Supreme Court of the Philippines (which also incorporates the opinion of the trial court), as it would seem to be very difficult to improve upon the grave, impartial, and convincing statement of the facts made by that Court. The record, however, is voluminous, and the greater part of the brief of the plaintiff in error is given over to its consideration and to citations therefrom adduced to sustain certain contentions.

While not deeming it necessary to submit any elaborate cross discussion on this head, the Government feels that it would be remiss in its duty to this Court if it failed to point out the utter incorrectness of some contentions on the brief of the plaintiff in error, which purport to be based upon citations from the record.

The first instance occurs at pages 23-25 of the brief, wherein it is sought to establish by citations from the record that the Court did not consider that certain witnesses were to be believed under oath, and based its conviction as to the truth of their story upon the theory that they were too ignorant to have invented it.

Two citations are made, one from page 289 of the Record and the other from page 295.

One is from the opinion of the trial judge; the second from the opinion of the Supreme Court of the Philippines. The first paragraph fails to quote the language which directly follows in the trial judge's opinion, to wit:

Their testimony is attacked strongly as being unlikely and suspicious but nevertheless it is strongly corroborated by the evidence of the record. (P. 289.)

The second paragraph of the first citation on page 24 of said brief from the opinion of the Supreme Court follows upon a discussion of the general rules of law laid down by the Philippine Courts as to the credibility of the testimony of accomplices and is directly followed in the record by this paragraph:

Two separate judges saw and heard these witnesses testify at the separate trials in the court below, and notwithstanding the searching and insistent cross-examination to which they were subjected by able counsel, both judges were convinced beyond a reasonable doubt of the truth of their account of the commission of the crime, as hereinbefore set out. (Rec. 295.)

The next citation on page 24 of plaintiff in error's brief is from page 296 of the record; and there the Court stated it did not believe the witnesses were inspired by a guilty conscience, but directly afterwards used the following language which the said brief has omitted:

Their confessions made to the police and their testimony given at the trial were all

manifestly inspired by the hope that by telling what they knew of the crime they might save their own necks. (P. 296.)

And we respectfully submit that this is a far stronger inducement to tell the truth than mere remorse.

Again, the last paragraph on page 24 of the said brief also stops just short of the important qualification. There is not even a comma to indicate a break in the sentence upon the said brief which ends with the word "falsity," but which should continue "under the rigid cross-examination to which they were compelled to submit, if it had been false." (R. 304.)

On page 25 of said brief is another sample of misleading citation: The asterisks here are inserted with apparent frankness, but the matter thus left out vitally changes the citation which should read "could have invented the story told by this witness, *and corroborated by other witnesses and after having invented it*, that he could have instructed and prepared the ignorant men (not "man" as the brief has it) *so that they would not have involved themselves in hopeless contradictions under the cross-examination of able counsel to which they were compelled to submit.*" (Rec. 305.) The words in italics are those whose omission is indicated by the asterisks.

One more instance will serve to complete the purpose of this point. On page 44 of said brief, the counsel is attempting to demonstrate that the court ignored the presumption of innocence in favor of the defendant and placed the burden on him.

To demonstrate this he cites from page 286 of the Record the following:

So then the evidence of the defense does not prove Valdez's innocence. and states that "this is clearly an erroneous view of the law."

Possibly it might be, if it stood alone; but, unfortunately for counsel for plaintiff in error, it is followed by this language immediately:

His salvation must be sought not in his evidence, but in that of the prosecution. If the evidence of the prosecution is not conclusive and any reasonable doubt should arise from its insufficiency, Valdez may be favored by the benefit of that doubt; otherwise it must inevitably be held that he is guilty.

We make no further comments upon these misleading citations.

II.

Even if the presence of the defendant at a view were a right upon which he might insist, it was a right which he could waive.

Considering now the first point on the plaintiff in error's brief.

A. Upon the question of view, it is important first to ascertain exactly what was done by the Court below and under what circumstances.

The point was first raised by motion for a new trial in the Supreme Court of the Philippines (Rec., 260), which would appear to be timely. (Sec. 3297, Phil. Comp. Laws.)

SEC. 3297. At any time before the final entry of a judgment for conviction * * * a case may be reopened on account of errors of law committed at the trial. The motion must be in writing and must set forth the errors alleged to have been committed.

In support of the motion, there were filed six affidavits (Rec. 261-268). The first four are practically identical in form, and aver that the widow of the deceased told and described to the judge the place where her husband fell, and other things, and cried; and that Capt. Crockett, of the Constabulary, pointed out to the judge the place where one of the alleged murderers told him he stood when he fired the shot, and also pointed out to him certain streets and houses connected with the case. Affidavit 6 simply confirms affidavit 5, which is by the plaintiff in error's attorney and which merely enlarges somewhat on the other affidavits, particularly as to what Crockett told the judge (Rec. 266, 267). On behalf of the United States, four affidavits were filed (Rec. 271-276)—by the widow, by Crockett, by the assistant attorney, and by the attorney for the widow—directly contradicting the allegations of the other affidavits as to testimony being taken or evidence given, except such indications as are incidental to a view. The Supreme Court of the Philippines made a finding of the facts, as follows (Rec. 308):

A careful examination of these affidavits and the counter affidavits filed by the appellee satisfied us that nothing more than inspec-

tion of the scene of the murder was made by the trial judge, and that *no evidence whatever was taken on that occasion.*

While possibly this finding of facts by the Supreme Court of the Philippines is not conclusive on this Court, being bound up in a question of organic law (*Nor. and West. Ry. v. Conley* (1915), 236 U. S. 605, 609, 610); still it "is, at least, to have the effect of a verdict of a jury upon a question of fact, and should not be disturbed unless the error is manifest." (*Reynolds v. United States* (1878), 98 U. S. 145, 159; *Holt v. United States* (1910), 218 U. S. 245, 248.) So looked at, it can not be said to be without any support, considering carefully all the affidavits made on both sides and the interest of the persons making them.

The Supreme Court of the Philippines ruled that the defendant had assented to such a view and had waived his right to be present, and that he had a right to make such a waiver.

B. The record shows that the defendant waived the right to be personally present at the view; and also that his counsel was actually so present.

As to the defendant's waiver of his right, the record (pp. 198, 199) shows the following:

Mr. BUENCAMINO. That is all. We will close our evidence, asking the court that it visit the place of the occurrence in order to make there an inspection so that the court may judge the distances.

Mr. CHICOTE. Yes; we do not object, so that the court may see.

The COURT. The result of that inspection will be evidence for both parties; therefore we will leave it until you have presented your rebuttal evidence.

Mr. SOUTHWORTH. Well, we wish that if the ocular inspection is to be made that the prosecuting attorney state what is the motive in making it.

PROSECUTING ATTORNEY. The object of this ocular inspection is that his honor may obtain an accurate idea of all the distance in connection with the assassination of the deceased, as well also of the places where the witnesses for the prosecution found themselves and where they talked together. We want that done in order that everything may be clear.

Mr. SOUTHWORTH. I have on two or three occasions been present at these ocular inspections held by the court and where they have there taken testimony that produced much confusion. What I wish, with the consent of the prosecuting attorney, is that an inspection be made there, but that no testimony be taken because it produces great confusion when one tries to examine witnesses at the place of the occurrence.

Mr. BUENCAMINO. What Mr. Southworth says would be very advisable, but I believe it would be very advisable also not to dispense with a task in which the court may exercise its discretion, so that when said court arrives there it may ask of unknown persons where the

deceased fell, where the wad was found, where Gatmaitan was, and where Mateo Arcilla was.

Mr. SOUTHWORTH. The prosecuting attorney has already proven that here, and there would be many questions and much cross-examination.

The COURT. The court has no objection to making that inspection after the defense has produced its rebuttal evidence, *not showing in the record the result of said inspection.*

Mr. SOUTHWORTH. We have no rebuttal evidence.

The COURT. So that we may close the case.

Mr. CHICOTE. Yes, sir.

The COURT. Good; tomorrow you may present your arguments. The session of the court is closed.

The record contains no evidence that the defendant ever asked to be present or that he ever objected to the taking of a view in his absence until after his trial and until the motion for a new trial.

The Government contends that he clearly waived his right, and his action was so construed by the Supreme Court of the Philippines (Rec. 308), where the Court said:

The record clearly discloses that this inspection was made with the consent of the counsel for Valdez, and that the trial judge was accompanied to the place where the murder was committed by counsel for both the prosecution and the defense.

This ruling of the Philippine Supreme Court as to the fact of the waiver should also "have the effect

of a verdict of the jury upon a question of fact and should not be disturbed unless the error is manifest." (*Holt v. United States* (1910), 218 U. S. 245, 248; *Reynolds v. United States* (1878), 98 U. S. 145, 159.)

The plaintiff in error now contends that his "absence during part of the proceedings before the trial court constitutes an error requiring reversal." (Plaintiff's Brief, p. 8.)

C. The doctrine of the case of *Hopt v. Utah* is not applicable.

The doctrine that certain rights guaranteed by the Constitution can not be waived by a defendant is not a doctrine which appears to be established at Common Law by any cases in English courts, but appears to have been given a definite formulation for the first time by this Court in *Hopt v. Utah* (1883), 110 U. S. 574, where, on the authority of a rather broad statement in Blackstone (1 Com. 133), the Court said (p. 579):

That which the law makes essential in proceedings involving the deprivation of life or liberty can not be dispensed with or affected by the consent of the accused, much less by his mere failure, when on trial and in custody to object to unauthorized methods;

and held that where a statute of the Territory of Utah provided that: "If the indictment is for a felony, the defendant *must* be personally present at the trial":

"it was not within the power of the accused or his counsel to dispense with the *statutory* re-

quirement as to his personal presence at the trial." (P. 579.)

And again:

The legislature has deemed it essential to the protection of one whose life or liberty is involved in a prosecution for felony that he shall be personally present at the trial; that is, at every stage of the trial when his substantial rights may be affected by the proceedings against him. If he be deprived of his life or liberty without being so present, such deprivation would be without that due process of law required by the Constitution (p. 579).

Thus, it was held that:

(a) The right to be present at every stage of the trial was derived from the due process clause of the Constitution;

(b) That in a capital case it could not be waived where a Territorial statute made it mandatory.

The holding as to waiver was based on public policy (and see *Schwab v. Berggren* (1892), 143 U. S., 442, 448, 449).

In *Lewis v. United States* (1892), 146 U. S., 370, 372, it was said:

A leading principle that pervades the entire law of criminal procedure is that, after indictment found, nothing shall be done in the absence of the prisoner. While this rule has at times and in the cases of misdemeanors been somewhat relaxed, yet in felonies it is not in the power of the prisoner, either by himself or his counsel, to waive the right to be person-

ally present during the trial "It would be contrary to the dictates of humanity to let him waive the advantage which a view of his sad plight might give by inclining the hearts of the jurors to listen to his defense with indulgence." (Cases cited.)

It is important to note that the doctrine enunciated in *Hopt v. Utah* is merely that, by public policy, "that which the law makes essential" can not be waived by a defendant; and in *Trono v. United States* (1905), 199 U. S., 521, 533, it is pointed out that the *Hopt* case rested on the ground that "in the Territory of Utah the accused was bound, by provisions of the Utah statute, to be present.

Wherever a question arises, therefore, in a capital case, as to whether the defendant has or has not the power to waive a right, it is necessary to determine whether that right was or was not a right "*which the law makes essential.*"

It is clear that not all rights guaranteed by the Constitution to a defendant in a criminal case are so "essential," by public policy, that they may not be waived. Let us see what these rights are:

(a) shall not twice be put in jeopardy of life or limb (Fifth Amendment);

(b) shall not be compelled to be a witness against himself (Fifth Amendment);

(c) shall not be deprived of life, liberty, or property without due process of law (Fifth Amendment);

(d) shall have speedy and public trial by an impartial jury (Sixth Amendment);

(e) shall be informed of the nature and cause of the accusation (Sixth Amendment);

(f) shall be confronted with the witnesses against him (Sixth Amendment);

(g) shall have compulsory process for obtaining witnesses in his favor (Sixth Amendment);

(h) shall have assistance of counsel for his defense (Sixth Amendment).

As to (a), it appears that there are circumstances under which a defendant will be held to have waived his right. See *Trono v. United States* (1905), 199 U. S. 521, and cases cited.

As to (b), there is no question that a defendant, even in a capital criminal case, may waive his right.

As to (c), there are certain elements of due process which are not so essential that they may not be waived. *Havard v. Kentucky* (1906), 201 U. S. 164, 175; *Frank v. Mangum* (1915), 237 U. S. 309, 310.

As to (d), it is clear that a plea of guilty, even to murder in the first degree, constitutes a waiver of trial.

As to (e), it is unquestionable that if a defendant proceeds to trial he will waive lack of information on the allegations of the indictment.

As to (f), under certain circumstances, a defendant may waive the privilege of confrontation. *Reynolds v. United States* (1878), 98 U. S. 145, 158; *Schick v. United States* (1904), 195 U. S. 65, 71.

As to (g), the right clearly may be waived.

As to (h), it is also clear that a defendant may, if he chooses, dispense with assistance of counsel. *Schick v. United States* (1904), 195 U. S. 65, 71.

- D. The constitutional privileges claimed by the plaintiff in error do not confer a nonwaivable right upon a defendant in a criminal case to be present at a view taken by a single justice sitting without a jury.**

The plaintiff in error contends that his right to be personally present at the view arose from one or all of three Constitutional provisions:

- (A) Section 5 of the Philippine Organic Act, which provides that:

“In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel” and “to meet the witnesses face to face.” Also “that no person shall be held to answer for a criminal offense without due process of law.”

See Section 3270, Philippine Compiled Statutes, amplifying these provisions of the Organic Act, as follows:

“In all criminal prosecutions the defendant shall be entitled to appear and defend in person and by counsel at every stage of the proceedings,” and to be confronted at the trial by “and to cross-examine the witnesses against him.”

- (B) The Sixth Amendment of the Constitution of the United States:

That the accused shall have the right
 * * * to be confronted with the witnesses
 against him * * * and to have the assist-
 ance of counsel for his defense.

(C) The Fifth Amendment, as including the right to be present at every stage of the trial, under the due process clause, that—

no person shall be deprived of life, liberty, or property without due process of law.

As to each of these rights, therefore:

(A) The right of confrontation;

(B) The right to be heard by himself and counsel;

(C) The right to be present at every stage of the trial; we have to consider whether or not it is broad enough to include the right of the defendant to be present at a view of the premises, taken by a single trial judge sitting without a jury, and if so, whether or not the accused may waive it.

1.

The right of confrontation applies only to testimonial evidence and not to the presence of a defendant at a view.

It is clear that the privilege of confrontation, based upon the right to "meet the witnesses face to face," does not include the privilege of being present at a view, and does not extend to such "evidence," if it may be properly so called, as may be obtained at a view. In *Mattox v. United States* (1895), 156 U. S. 237, 242, the object of this right is shown to be the prevention of the introduction of depositions and ex parte affidavits by persons whom the accused might cross-examine. *It is intended to apply only to testimonial evidence*; or, as is said in the *Dowdell case supra*, on page 330, to "secure the accused in the right to be tried as far as facts provable by

witnesses are concerned, by only such witnesses as meet him face to face at the trial, who give their testimony in his presence and give to the accused the opportunity of cross-examination." The distinction is brought out in the case of *Kirby v. United States* (1899), 174 U. S. 47, 54, 55. See also *Mattox v. United States* (1892), 146 U. S. 140, where a dying declaration was admitted; *Holt v. United States* (1910), 218 U. S. 245, 252, 253, where the privilege against self-incrimination was held not to exclude such evidence as might be obtained from the body of the accused; and *Reynolds v. United States* (1878), 98 U. S. 145, where evidence given on a former trial by a witness whose absence at the second trial was procured by the accused, was allowed to be read.

The Government submits that the right to be present at a view clearly can not be derived from the confrontation clause of the Constitution.

2.

The right to be heard by himself and counsel based on the Sixth Amendment to the Constitution of the United States does not confer the right to be present at a view.

It must be continually borne in mind with regard to this privilege that the plaintiff in error seeks only to assert it with respect to the view taken by the trial court without a jury, as hereinabove set forth. There is no contention that the accused was denied the exercise of this right at any other time during the trial. *And it has further appeared that he was actually represented upon this view by his coun-*

sel who consented that the view be taken and was present thereat.

The plaintiff in error insists that he had a constitutional right to be present personally at the view, based on that portion of Section 5 of the Philippine Organic Act (and of Section 3270 of the Philippine Code), which gives the defendant "the right to be heard by himself and counsel," and "that he shall be entitled to appear and defend in person and by counsel at every stage of the proceedings." As to the first provision, i. e., of the Organic Act, it may be said that it can not be any broader than that expressed in the Sixth Amendment to the Constitution of the United States which provides that the accused shall have the right to the "assistance of counsel for his defense." See *Kepner v. United States* (1904), 195 U. S., 100, 121. As to the second (the Philippine local statute) there can be no claim, that, except so far as the statute embodies a constitutional provision it can not be waived.

Upholding such a foundation for the right thus claimed by the plaintiff in error, if it were not for certain *dicta* in the case of *Diaz v. United States* (1912), 223 U. S. 442, 455 (considered *infra*), there is no weight of authority for the rule requiring the presence of the accused at all stages of the trial, which, while asserted universally in the jurisprudence of England, of the United States and of the several States, is not founded on the constitutional provision as to the right of "assistance of counsel for his defense."

It is derived from the early English Common Law and so it is stated in *Ball v. United States* (1891), 140 U. S. 118, 131.

By statute, in the reign of Edward III, it was provided (28 Ed. 3, c. 3, 1354) that "no man * * * shall be * * * taken or imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law." This was later said by Blackstone (4 Com., 318), to necessitate the presence of the defendant at the trial. Furthermore, it was the early law that in indictments concerning life and member a defendant must plead personally and not by attorney only (*Rex v. Bacon*, 1664, 1 Keble, 809; 1 Levinz, 146); that in criminal cases generally the defendant must be present at the trial to hear the testimony and have the opportunity to cross-examine the witnesses (*Rex v. Vipont*, 1761, 2 Burr, 1163; *Rex v. Aiken*, 1765, 3 Burr, 1785; *Rex v. Crowther*, 1786, 1 T. R., 125, 127; *Rex v. Baker*, 1745, 2 Strange, 1239, *contra*, but reconciled in the *Vipont case*); that the defendant must be present during the argument (*Rex v. Nicolls*, 1745, 2 Strange, 1227), and in felony cases, at the verdict, so that the jury may look at him (*Rex v. Legingham or Ladsingham*, 1670, 2 Keble, 687; T. Taym. 193); and if corporal punishment is to be inflicted, at the judgment (*Rex v. Harris and Duke*, 1689, 1 Ld. Raym. 267, 482; Skinner, 683; Comberbach, 447; Holt, 399; 1 Salkeld, 400; 12 Mod., 156; Lofft, 400; *semble Regina v. Templeman*, 1700, 1 Salk. 56). It has also been held that he must be present at a motion in arrest of

judgment (*Rex v. Hayes*, 1730, 2 Strange, 843), and on a motion for a new trial so that the court will be sure of him. (*Rex v. Gibson*, 1734, 2 Strange, 968; Sessions Cas. 123; 2 Barnardiston, 412; Cunningham, 29.) See also Chitty's Criminal Law, 337, 369, 411, 412, 414, 636, 653, 695; Coke on Littleton, 227b; 2 Hale's Pleas to the Crown, 299-301; 2 Hawkins' Pleas to the Crown, 633.

A compilation of the cases in all the States wherein any mention is made of the origin of this right shows that the overwhelming weight of authority attributes it to sources other than the constitutional source claimed by the plaintiff in error. (See Appendix A.) In most of the State courts, the right is held to be nothing more than reenactment of the Common Law (for example, see *Commonwealth v. Cody* (1896), 165 Mass., 133; *Frey v. Calhoun* (1895), 107 Mich. 130); in some, it is said to be based upon the common law itself; in others, partially upon the privilege of confrontation; and in only a few, upon provisions in the State Constitutions granting the privilege of being "heard by himself and counsel."

On the other hand, the historical grounds for the constitutional provision relative to "assistance of counsel," as given in the authorities, show that it was adopted for a reason entirely different from that for which the plaintiff in error contends. Originally, at Common Law, no counsel was allowed a prisoner in a felony case except on appeal, unless it became necessary to argue some point of law. (2 Hawkins

P. C., c. 39, secs. 1, 2, 3, and 4.) It was believed that "the simplicity and innocence, artless and ingenious behavior (sic) of one whose conscience acquits him," had "something in it more moving and convincing than the highest eloquence of persons speaking in a cause not their own," and further that it being "the duty of the Court to be indifferent between the King and the Prisoner," no special harm could come to the defendant." This rule, as pointed out by Blackstone (4 Com., 355); by Foster (Crown Cases, pp. 231, 232) and by Bishop (1 New Criminal Procedure, secs. 14-22, 120) led to such great abuses that to prevent any similar situation from arising here the constitutional provision permitting counsel for the defense was passed. (2 Story Constitution, Sections 1793 and 1794.) The wording of the clause as it appears in the United States Constitution brings out this object with unequivocal clearness.

The right of a defendant in a criminal case to be present at all stages of the trial is a right which had long been secured to him before the right to have counsel was granted to him at Common Law, and therefore was clearly not derived from the right to be heard by himself and counsel, given either by the Sixth Amendment or by the Organic Act of the Philippine Islands (as claimed by the plaintiff in error).

The dicta in the Diaz case.

In *Diaz v. United States* (1912), 223 U. S. 442, 453, it was objected that the accused was wrongly convicted of homicide not capital in that the trial pro-

ceeded in part in his absence. The facts, as stated by the Court, were these:

The accused was represented and heard by counsel at every stage of the proceedings. He also was present in person at all the proceedings preliminary to the trial and at the time it was begun and during the major part of it. But on two occasions in the latter part of the trial he voluntarily absented himself and sent to the court a message expressly consenting that the trial proceed in his absence, which was done. On these occasions two witnesses for the Government were both examined and cross-examined. No complaint grounded upon his absence was made in the trial court or in the Supreme Court of the Philippines; and the objection now made is not that he did not voluntarily waive his right to be present, if he could waive it, but that it could not be waived, and that the court was therefore without power to proceed in his absence.

The Court then cited the provisions of the Philippine Comp. Stat. applicable, which are as follows:

SEC. 3270. In all criminal prosecutions the defendant *shall be entitled* (a) to appear and defend in person and by counsel at every stage of the proceedings * * *.

SEC. 3271. * * *. If the charge is for felony (*delito*), the defendant *must* be personally present at the arraignment * * *.

SEC. 3280. A plea of guilty can be put in *only* by the defendant himself in open court * * *.

SEC. 3296. The defendant *must* be personally present at the time of pronouncing judgment if the conviction is for a felony;
* * *

and held that as three sections, 3271, 3280, 3296, were mandatory, and Section 3270 permissive, under the facts above stated the presence of the accused was not indispensable and there was no infraction of the Philippine laws in that regard.

It then discussed the provision of the Philippine Organic Act securing to the accused in all criminal prosecutions "the right to be heard by himself and counsel," and stated that a similar provision was found in the constitutions "of the several States" and "its substantial equivalent is embodied in the Sixth Amendment to the Constitution of the United States."

On the assumption that the right to be present at all stages of the trial was derived from the right to have "assistance of counsel," the court proceeded to say:

In cases of felony our courts, with substantial accord, have regarded it as extending to every stage of the trial inclusive of the empaneling of the jury and the reception of the verdict and as being scarcely less important to the accused than the right of trial itself. And with like accord they have regarded an accused who is in custody and one who is charged with a capital offense as incapable of waiving the right; the one because his presence or absence is not within his own control, and the other

because, in addition to being usually in custody, he is deemed to suffer the constraint naturally incident to an apprehension of the awful penalty that would follow conviction.

As, however, the case which it was considering was not a capital felony, the Court held that the right to be present at all stages of the trial was in such case a waivable right, saying (p. 459):

We conclude that the Philippine laws before quoted accord to one charged with a felony *the full right expressed in the congressional enactment, as that right was recognized and understood in this country at the time it was carried to the Philippines* and that what was done in the present case there was no infringement of it.

The authority of the *Diaz case*, however, is limited to its actual decision on the facts involved; for in the language of Marshall, C. J., in *Cohens v. Virginia*, 6 Wheat., 264, 398:

It is a maxim not to be disregarded that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected but ought not to control the judgment in a subsequent suit when the very point is presented for decision.

"The prevailing course of decision" (referred to in the *Diaz case*, p. 455) was not to the effect, as expressed in the *dictum*, that "one who is charged with a capital offense is incapable of waiving the right" of being "heard by himself and counsel" if that right be construed to embrace the presence of the accused

throughout the trial. On the contrary, the right to be present at the trial had, as shown *supra*, been attributed by the courts of this country to a Common Law doctrine, which would be found in the Constitution in the due process clause and not in the assistance of counsel clause.

It is probable that it was the failure of the plaintiff in error in the *Diaz case* to take an assignment of error under or to argue the due process clause, that caused this Court to fail to notice that it was this clause rather than the assistance of counsel clause (under which assignment of error was taken), which was the true foundation of the right to be present at every stage of the trial.

3.

The right to be present at a view, if a constitutional privilege, must be derived from the right to be present at all stages of the trial. The latter right is derived from Common Law and is protected by the due process clause of the Fifth Amendment.

Having eliminated the confrontation and assistance of counsel clauses of the Constitution as sources of the defendant's right to be present at a view, we come to the due process clause of the Fifth Amendment as the source further claimed by the plaintiff in error.

As pointed out *supra*, the defendant's right to be present at all stages of the trial is properly derived from the rules of the old English Common Law, and therefore is secured to defendants in United States courts by the due process clause of the Constitution. But to sustain plaintiff in error's position and to bring

his right within the purview of the doctrine of *Hopt v. Utah*, *supra* (as limited and explained by later cases), two things must be established:

First. Is a view actually, in law, a "part of the trial" at which the Common Law required the defendant to be present?

Second. Was the right to be present at a view such an "essential" right, as public policy forbids to be waived, under the doctrine of *Hopt v. Utah*?

(a)

View was not a Part of the Trial at Common Law at which Defendant was required to be present.

On the first point, while there is some conflict of cases, the weight of authority and of reason is to the effect that a view is not such a "part of the trial." *People v. Thorn* (1898), 156 N. Y., 286; 42 L. R. A., 378-381, and cases there cited; *Price v. United States*, (1899), 14 D. C. App., 391, 405.

Prof. Wigmore very strongly holds that there is no necessity for the defendant's presence:

As to the argument that the jury's view is a part of the trial and that the accused is entitled to be present at every part of the trial, the answer is that the accused might equally well claim to be present at the jury's deliberations over their verdict, for that is equally a part of the trial; if there is no inherent and invariable necessity for that part, neither is there for this. As for the related suggestion that the holding of a view in the

absence of the defendant is the holding of a part of the trial "away from the place appointed for the holding of the court," it would follow from this that the judge and other court officers should be present also; but no one has ever supposed this necessary. It would be, on the contrary, much easier to question the propriety of the Court's adjourning and traveling in a body to the place of a view, for such a proceeding would be more open to the criticism that it took the trial "away from the place appointed for the holding of the Court." It is impossible to argue in the same moment both that the Court must be held at the place appointed and that it must be held in part somewhere else. (Wigmore, Vol. 3, Sec. 1803; Supp. Vol. 5, Sec. 1803.)

A few of the States hold that a defendant must be present when the jury are taken to visit the place of the crime, on the ground that a view constitutes a part of the taking of evidence (12 Cyc., 527, and cases cited); but the better opinion is that a view is not evidence, certainly not testimonial evidence.

It appears (see compilation of cases, Exhibit B, pp. 50-52 *infra*), that in the thirty-four States where the matter has been raised, the courts of thirty-three have decided that a view is in every case discretionary with the trial judge. Texas alone does not permit a view in a criminal case. Out of the same States only four, to wit, Kentucky, Mississippi, Montana, and West Virginia, have provided in their statutes on the subject of view that the defendant must be present.

In Louisiana, it has been held that under the Common Law the defendant must be present. In California and Arkansas, the courts have decided that the presence of the defendant was necessary at the view; in Nebraska, that he must waive the right; in Nevada, that his consent was necessary; in all the other States, that either his presence was not necessary, or that he could waive it and must be deemed to have waived the privilege, or that he actually had so waived it. A careful discussion of the reasons pro and con and a recapitulation of many of the authorities on the subject will be found in *State v. Mortenson* (1903), 26 Utah, 312.

From these authorities, it appears that the view is either not part of a trial at all, or at most it is not such a part of the trial as at which, for any reason of public policy, justice to the defendant or constitutional enactment makes the presence of the accused compulsory.

The most significant fact appearing from a consideration of the statutes authorizing a view in the various States is that, although the legislatures have been at the greatest pains to safeguard the conduct of the jury in almost every instance, only four out of thirty-four have made any provision for the presence of the defendant. An examination of the decisions of the courts under said statutes shows that the overwhelming majority not only believed that such view was not in any proper sense the taking of evidence, but that all necessary precautions were in-

corporated in the statutes to render it impossible that evidence should be taken at or by means of such view.

The great weight of authority, therefore, is to the effect that the presence of the defendant at a view is either unnecessary or undesirable, or both. The whole situation was well and tersely put in the case of *State v. Ah Lee* (1880), 8 Oregon, 214, murder, where the Court said:

We consider the better doctrine to be that the failure of the accused to be present when the jury are taking their view is no ground of error. We are unable to see what good his presence would do, as he could neither ask nor answer any questions, nor in any way interfere with the acts, observations, or conclusions of the jury. He would have been only a mute spectator while he was there.

At this point reference may be made to the citations on the brief of the counsel for the plaintiff in error which purport to be authorities *contra* to the above.

Authorities cited by Plaintiff in Error in opposition to the above contention, pages 12 and 13, brief of plaintiff in error.

The first citation from Wharton on Criminal Law reads as follows:

The visit (of the jury) must be made
* * * in the presence of the accused who
is entitled to have all the evidence received
by the jury taken in his presence.

Counsel stops his quotation in the middle of a sentence, there being only a comma after the word "presence," the sentence continuing as follows:

though a refusal to attend by the defendant, he being duly requested and empowered to do so, may not vitiate the proceedings.

Thus the doctrine of waiver is clearly implied.

The next citation from 22 Enc. Pl. & Pr., p. 1059, states the doctrine that a view in the prisoner's absence would violate the prisoner's constitutional right of confrontation. But here again, reading further from the same volume at the same place, we find the next paragraph to be as follows:

The accused may, however, waive his privilege of being present at a view. A waiver exists where the view was directed on the motion of the accused and no request was made by him to be present thereat, and a defendant waives his privilege of being present at a view by declining to accompany the jury, though requested to do so.

The cases of *Tully v. Railroad Co.*, 134 Mass. 499, and *Wall v. United States Mining Co.*, 232 Fed. 613, are civil actions and hence not in point here. The remaining citations are one from California and one from Arkansas, which States have already been shown to be two of the very few that hold against the overwhelming weight of authority.

As to the casual statement of the trial court in the Record (p. 198) that "the result of that inspection will be evidence for both parties," relied on by counsel

for plaintiff in error, the Court said immediately thereafter (p. 199) that it had "no objection * * * to making that inspection, not showing in the record the result of said inspection," and the Philippine Supreme Court has found as a fact "that no evidence whatever was taken on that occasion" (p. 308 Rec.).

(b)

Even if part of the trial, view at Common Law was waivable.

Aside from the question as to whether a view, as a matter of law, is a part of the trial, it is clear that a defendant is not entitled to be present at every part of a trial. As Wigmore has shown, this right certainly can not be asserted during the deliberations of the jury, although such are undoubtedly part of the trial.

But even if the Government's contention be wrong, that a view is not such a part of the trial as requires the presence of the defendant, still it is unquestionably true that his right to be present at a view was not such an "essential" right at Common Law as could not be waived.

On the contrary, a survey of the history of the Common Law as to the practice of granting views clearly discloses the fact that the consent of the defendant was required to the taking of a view, and that therefore this consent could be given with conditions and would involve the presence or absence of the defendant, as he saw fit.

In the early days of English law it seems to have been the practice to grant a view when the title to

land was concerned. (Glanville, Book II, Chaps. I, II, and III; Britton; Translation of F. M. Nicols in the Legal Classic Series, 242, 243, 245 (117 et seq., Vol. I), 403 (192, Vol. II); Rolle's Abridgment, 725-731; Statham's Abridgment, translation of Klingelsmith, 1915, Vol. II, 1284-1292; Fitzherbert's Abridgment, 229-233; Brooke's Abridgment 303-306; Keilway, 51, 4 (1503); Keilway, 126, 88 (1503); *Herbert v. Vernon* (1560), 2 Dyer, 179a (41); *Stradling v. Morgan* (1560), Plowden, 199 at 305; Moore, 32n, 107 (1561); 2 Dyer, 210b (27) (1562); Moore, 68n, 184 (1564); *Livesey's case* (1588), Leonard, 86; *Dr. Ayray's case* (1614), 11 Coke, 18 at 22; *Calvin's case* (1609), 7 Coke, 1 at 3; *Heydon v. Godsole* (1614), 2 Bulstrode, 159 at 161. The law as laid down by these authorities is thus summarized in II Sheppard's Digest, 167, title "View":

View is where an action is brought for land, and the defendant Doth not well know what land it is that the Demandant asketh, then the Tenant shall pray the View, that is, that he may see the Land which he claimeth. Then the Court will send Veyors to view the place in question for the better decision of the Right and if the Defendant deny, this is called a Counter-plea of the View.

At a later period it became clear that a view could be had in real actions only if the parties consented. In 2 Lilly's Abridgment, title "View" (1745), it is said:

A view is for a jury to see the Land or Thing in Question, and lies in Ejectment, Waste, and

several real Actions; and also in Assizes of Novel Disseisin, where at least six of the Recognitors must have the View before the Assizes.

The Jury ought not to view the Place in Question betwixt the Plaintiff and the Defendant, without the Direction of the Court although the parties will consent. By Glyn Chief Justice, Pasch. 1656 B. S. For the Court is to direct all the Proceedings in Law, in order to the Trial, as being indifferent and best knowing to do that which is for the expediting of Justice.

The Court will grant that the Jury shall view the Thing in Question for them to try, if the Plaintiff and Defendant will consent unto it, otherwise not.
Mich. 1650 B. S. Nov. 15.

See also 6 Comyn's Digest, 396 (1800).

And this rule remained unchanged as the practice of granting a view broadened. In criminal cases, as might naturally be supposed, a view, though later permitted generally, was at first only allowed when the indictment related to land (*Sir Edward Duncumb's case* (1635) Croke's Charles 366 (indictment for narrowing a highway); *King v. Staughton* (1671), 2 Keble, 665; 1 Sid. 464; 2 Saunders, 160 (indictment for not repairing a highway).

The necessity of consent by both parties, however, before a view was permitted, persisted in this branch of the law, viz, criminal cases. (*King v. Kingsmill* (1714) 1 Sess. Cas. 87; *Anonymous* (1728) 1 Barnardiston, 144; *King v. Hatchley Tradgeley* (1732), 1

Sess. Cas., 180, also repeated as Anonymous, 2 Barnardiston, 214; *King v. Redman* (1756) Ld. Kenyon, 384), though by the statute of 4 Anne, c. 16, s. 8, in 1705, it was dispensed with in civil cases (1 Burr, 252). The *Redman case*, supra, evidently became the leading or at least the most accessible case in later times since *Bacon* (5. Abridgement, 375), *Thompson* (Trials, Section 879), and English cases refer to it first.

It seems, therefore, that at the time when the law of England became the Common Law of this country, a view in a criminal case could be had only if the defendant, among others, consented. The proceeding was wholly optional and a party, if he desired, might hedge it around with whatever conditions he saw fit. Likewise he could dispense with whatever conditions he pleased. If he consented to a view, a view could be had; so therefore if he consented to a view in his absence, a view could be had in his absence. Whatever conditions he desired were necessary, and whatever conditions he dispensed with were unnecessary. Such seems to have been the process relating to view in England at the time it became the due process protected by the Constitution. Except for the decision in *Commonwealth v. Parker* (1824), 2 Pickering, 552, holding that there could be no view in a criminal case in Massachusetts, there is no early authority one way or the other in this country. Subsequently, however, by Chapter 137, Section 10, of the Revised Statutes of 1836, it was provided that the court might order a

view by a jury in a criminal case and this has since been held to be a matter of discretion in that State. *Commonwealth v. Chance* (1899), 174 Mass., 245. See also *Commonwealth v. Knapp* (1830), 26 Mass., 496; *Commonwealth v. Webster* (1850), 59 Mass., 295.

It appears, therefore, that there was at Common Law nothing inalienable about the privilege of being present at a view, which due process would crystallize into a protected right either under the Fifth Amendment (or under that part of the Philippine Organic Act, derived from and embodying guaranties to be construed as identical with those of the Fifth Amendment—*United States v. Kepner*, (1904), 195 U. S., 100, 124).

Hence, it is submitted that the plaintiff in error can take nothing by assignments based on the due process clause of the Fifth Amendment.

In other words, inasmuch as presence at a view was, under the Common Law, optional with a defendant, it clearly was not such an "essential right," under the due process clause, as public policy forbade to be waived by such defendant. *Hopt v. Utah*, *supra*, is, therefore, inapplicable to the case at bar, and *Diaz v. United States*, *supra*, would be equally inapplicable, even if the *Diaz case* had held the right to be present at all stages of the trial to be derivable from the Due Process Clause (instead of from the Assistance of Counsel Clause).

III.

It would be contrary to Public Policy to hold that Defendant's presence at a View is legally necessary and nonwaivable.

The whole doctrine of the nonwaivability of rights by a defendant is founded, in the last analysis, on public policy, and is so stated in *Hopt v. Utah*.

The Government urges strongly upon this Court the impolicy of establishing any rule which should make mandatory and nonwaivable the attendance of a defendant in a criminal case at a view.

In the first place, at no properly regulated inspection can a jury (or as in this case, a single justice) do more than observe the lay of the land and the disposition of the objects of interest connected with the crime. No evidence can be taken and no criticism or opinion offered by either side. There is, therefore, in spite of remarks in the cases, no valid reason necessitating the presence of the defendant. That is obviously the reason why defendants have so often waived the privilege of attendance. In the second place, in many parts of the United States, especially in Alaska and the Philippines, views may be taken of places hundreds or even thousands of miles away from the place of trial. In our Southern and Western States, also, views may be taken in distant places and sparsely settled regions. Facilities for travel may be limited; means of conveyance insecure. A requirement of the presence of the

defendant, nonwaivable by him, presents a real danger or added facility for the escape, or rescue, of the prisoner.

A conclusion, therefore, which would extend to a criminal defendant a comparatively valueless privilege at the expense of the safe and effective execution of justice should be avoided if possible.

CONCLUSION.

For the reasons above stated, the judgment of the court below should be affirmed.

CHARLES WARREN,
Assistant Attorney General.

APPENDIX.

The cases herein cited under Appendix A show that the overwhelming weight of authority is to the effect that the privilege of being "heard by himself and counsel" was derived from the common law. (See p. 29, *supra*.)

Those cited under Appendix B show that a view is discretionary with the trial judge in thirty-three out of thirty-four cases where the question was raised; in Texas alone is the view forbidden. (See discussion on p. 36, *supra*.)

APPENDIX A.

State v. Hughes (1841), 2 Ala., 102; *Ex Parte Bryan* (1870), 44 Ala., 402; *Brister v. State* (1855), 26 Ala., 107; *Elias v. Territory* (1904), 9 Ariz., 1; *Sneed v. State* (1843), 5 Ark., 431; *Cole v. State* (1850), 10 Ark., 318, 324; *Sweeden v. State* (1857), 19 Ark., 205; *Warren v. State* (1857), 19 Ark., 214; *Brown v. State* (1867), 24 Ark., 620; *Osborn v. State* (1867), 24 Ark., 629; *Baker v. State* (1882), 39 Ark., 180; *Bearden v. State* (1884), 44 Ark., 331; *Gore v. State* (1889), 52 Ark., 285; *Bolling v. State* (1891), 54 Ark., 588; *Polk v. State* (1885), 45 Ark., 165; *Bond v. State* (1897), 63 Ark., 504; *Kinnemar v. State* (1899), 66 Ark., 206; *Stroope v. State* (1904), 72 Ark., 379; *Darden v. State* (1904), 73 Ark., 315; *Vasser v. State* (1905), 75 Ark., 373; *People v. Kohler* (1855), 5 Cal., 72; *People v. Miller* (1867), 33 Cal., 99; *Green v.*

People (1876), 3 Colo., 68; *Christ v. People* (1877) 3 Colo., 394; *Lawn v. People* (1888), 11 Colo., 343; *State v. Hurlbut* (1784), 1 Root, 90; *Holton v. State*, 2 Fla., 476; *Gladden v. State* (1869), 12 Fla., 562; *Summeralls v. State* (1896), 37 Fla., 162; *Wade v. State* (1852), 12 Ga., 25; *Bonner v. State* (1881), 67 Ga., 510; *Tiller v. State* (1895), 96 Ga., 430; *State v. Watkins* (1900), 7 Idaho, 35; *Nomaque v. People* (1825), Breese, 109; *Holliday v. People* (1847), 4 Gillman, 111; *Harris v. People* (1889), 130 Ill., 457; *State v. Wilson* (1875), 50 Ind., 487; *Epps v. State* (1885), 102 Ind., 539; *Roberts v. State* (1887), 111 Ind., 340; *Lillard v. State* (1898), 151 Ind., 322; *Southerland v. State* (1911), 96 Northeastern, 583; *Harriman v. State* (1849), 2 G. Greene's R., 270; *State v. Decklotts* (1865), 19 Iowa, 447; *State v. Hutchinson* (1895), 95 Iowa, 566; *State v. Myrick* (1888), 38 Kans., 238; *State v. Adams* (1878), 20 Kans., 311, 326; *State v. Kendall* (1895), 56 Kans., 238; *State v. Way* (1907), 76 Kans., 928; *State v. Thurston* (1908), 77 Kans., 522; *Temple v. Commonwealth* (1879), 77 Ky., 769; *Allen v. Commonwealth* (1888), 86 Ky., 642; *State v. Martinez* (1856), 11 La. Ann., 23; *State v. Outs* (1878), 30 La. Ann., 1155; *State v. Hersom* (1879), 90 Me., 273; *Commonwealth v. Costello* (1876), 121 Mass., 371; *Commonwealth v. McCarthy* (1895), 163 Mass., 458; *Commonwealth v. Cody* (1896), 165 Mass., 133; *Frey v. Calhoun* (1895), 107 Mich., 130; *State v. Sommers* (1895), 60 Minn., 90; *State v. Gorman* (1911), 113 Minn., 401; *Kelly v. State* (1844), 11 Miss., 518; *Scaggs v. State* (1847), 16 Miss., 722; *Price v. State* (1858), 36 Miss., 531; *Sherrod v. State* (1909), 93 Miss., 774; *State v. Buckner* (1857), 25 Mo., 167; *State v. Cross* (1858), 27 Mo., 332; *State v. Schoenwald* (1860), 31 Mo., 147; *State v.*

Brown (1876), 63 Mo., 439; *State v. Hoffman* (1883), 78 Mo., 256; *State v. Hope* (1889), 100 Mo., 347; *State v. Spotted Hawk* (1899), 22 Mont., 33; *Burley v. State* (1869), 1 Nebr., 385; *Dodge v. People* (1876), 4 Nebr., 220; *Miller v. State* (1890), 29 Nebr., 437; *Davis v. State* (1897), 51 Nebr., 301; *West v. State* (1849), 22 N. J. L., 212; *Donnelly v. State* (1887), 49 N. J. L., 252; *Jackson v. State* (1887), 49 N. J. L., 252; *State v. Peacock* (1887), 50 N. J. L., 34, reversed on another ground, 50 N. J. L., 653; *Territory v. Lopez* (1884), 3 N. Mex., 156, 162; *People v. Winchell* (1827), 7 Cowen, 525; *People v. Perkins* (1828), 1 Wend., 91; *Son v. People* (1834), 12 Wend., 344; *People v. Taylor* (1846), 3 Denio, 98; *People v. Clark* (1852), 1 Parker Cr. Repts., 360; *Maurer v. People* (1870), 43 N. Y., 1; *People v. Vail* (1879), 6 Abbott N. C., 206; *People v. Bragle* (1882), 88 N. Y., 585; *State v. Craton* (1845), 28 N. C., 164; *State v. Blackwelder* (1866), 61 N. C., 38; *State v. Kelley* (1887), 97 N. C., 404; *State v. Cherry* (1911), 154 N. C., 624; *Territory v. Gay* (1879), 2 Dakota, 125, 148; *State v. McLain* (1905), 13 N. D., 368; *Kirk v. State* (1846), 14 Ohio, 511; *Jones v. State* (1875), 26 Ohio St., 208; *Griffin v. State* (1878), 34 Ohio, 299; *Rose v. Ohio* (1851), 20 Ohio, 31; *Day v. Territory* (1894), 2 Okla., 409; *LeRoy v. Territory* (1895), 3 Okla., 596; *Ward v. Territory* (1899), 8 Okla., 12; *Humphrey v. State* (1913), 3 Okla. C. R., 504; *State v. Spores* (1871), 4 Oreg., 198; *State v. Cartwright* (1881), 10 Oreg., 193; *State v. McDaniel* (1914), 70 Oreg., 235; *Jacobs v. Commonwealth* (1819), 5 S. & R., 315; *Dunn v. Commonwealth* (1847), 6 Pa., 384; *Prine v. Commonwealth* (1851), 18 Pa., 163; *State v. Guinness* (1898), 16 R. I., 401; *State v. David* (1880), 14 S. C., 428; *State v.*

Jefcoat (1883), 20 S. C., 383, 386; *State v. Brock* (1901), 61 S. C., 141; *Territory v. Gay* (1879), 2 Dakota, 125, 148; *State v. Swenson* (1904), 18 S. D., 196; *State v. France* (1809), 1 Overton, 434; *State v. Jones* (1820), 2 Yerger, 22; *Clark v. State* (1843), 4 Humphrey, 254; *Andrews v. State* (1855), 2 Sneed 550; *Witt v. State* (1867), 15 Coldwell, 15; *Richards v. State* (1892), 7 Pickle, 723; *Logan v. State* (1904), 4 Thompson, 75; *Beaumont v. State* (1877), 1 Texas App., 533; *Gibson v. State* (1878), 3 Texas App., 437; *Mapes v. State* (1882), 13 Texas App., 85; *Rudder v. State* (1890), 29 Texas App., 262; *Bell v. State* (1893), 32 Texas Crim. Rep., 436; *Emery v. State* (1909), 57 Texas App., 423; *Hopt v. Utah* (1883), 110 U. S., 574; *State v. Woolsey* (1899), 19 Utah, 486; *State v. Mannion* (1898), 19 Utah, 505; *State v. Mortensen* (1903), 26 Utah, 312; *State v. Wheeler* (1830), 3 Vt., 344; *Sperry's Case* (1838), 9 Leigh, 623; *Hooker v. Commonwealth* (1855), 13 Gratt., 763; *Jackson v. Commonwealth* (1870), 19 Gratt., 656; *Boswell v. Commonwealth* (1870), 20 Gratt., 860; *Lawrence v. Commonwealth* (1878), 30 Gratt., 845; *Shelton v. Commonwealth* (1892), 89 Va., 450; *State v. Duncan* (1893), 7 Wash., 336; *State v. Main* (1911), 66 Wash., 381; *State v. Schutzler* (1914), 82 Wash., 365; *Younger v. State* (1868), 2 W. Va., 579; *State v. Conkle* (1880), 16 W. Va., 736; *State v. Parsons* (1894), 39 W. Va., 464; *State v. Stevenson* (1908), 64 W. Va., 392; *French v. State* (1893), 85 Wis., 400; *Hill v. State* (1864), 17 Wis., 675; *Stoddard v. State* (1907), 132 Wis., 520.

APPENDIX B.

Elias v. Territory (1904), 9 Ariz., 1, 11; *Benton v. State* (1875), 30 Ark., 328; *Vassar v. State* (1905), 75 Ark., 373; *People v. Bonney* (1861), 19 Cal., 426

People v. Green (1878), 53 Cal., 60; *People v. Bush* (1886), 68 Cal., 623; *People v. Bush* (1887), 71 Cal., 602; *People v. Yut Ling* (1888), 74 Cal., 559; *Garcia v. State* (1894), 34 Fla., 311, 332; *O'Berry v. State* (1904), 47 Fla., 75; *State v. Reed* (1894), 3 Idaho, 754; *State v. McGinnis* (1906), 12 Idaho, 336; *State v. Baker* (1916), 28 Idaho, 727; *Fleming v. State* (1858), 11 Ind., 234; *Luck v. State* (1884), 96 Ind., 16; *Shular v. State* (1885), 105 Ind., 289; *State v. Adams* (1878), 20 Kans., 311, 326; *Rutherford v. Commonwealth* (1880), 78 Ky., 639; *State v. Bertin* (1872), 24 La. Ann., 46; *Commonwealth v. Parker* (1824), 19 Mass., 550; *Commonwealth v. Knapp* (1830), 26 Mass., 496; *Commonwealth v. Webster* (1850), 59 Mass., 295; *Commonwealth v. Chance* (1899), 174 Mass., 245; *People v. Hull* (1891), 86 Mich., 499; *People v. Auerbach* (1913), 176 Mich., 23, 46; *Chute v. State* (1872), 19 Minn., 271; *Foster v. State* (1893), 70 Miss., 755; *State v. Hancock* (1898), 148 Mo., 488; *State v. Landry* (1903), 29 Mont., 218; *Carroll v. State* (1876), 5 Nebr., 31; *State v. Lopez* (1880), 15 Nev., 407; *State v. Hartley* (1895), 22 Nev., 342; 28 L. R. A., 33; *State v. Buzzell* (1879), 59 N. H., 65; *Eastwood v. People* (1855), 3 Parker's Cr. Repts., 25, 52; *People v. Palmer* (1887), 5 N. Y. Cr. Repts., 101; *People v. Gallo* (1896), 149 N. Y., 106; *People v. Thorn* (1898), 156 N. Y., 286; *People v. Pisano* (1911), 142 N. Y. App., 524, 529; *Hotelling v. State* (1889), 3 Ohio Ct. Ct. Repts., 630; *Blythe v. State* (1890), 47 Ohio, 234; *Reighard v. State* (1901), 22 Ohio Ct. Ct. Repts., 340; *Hays v. Territory* (1898), 7 Okla., 15; *Starr v. State* (1911), 5 Okla. Cr. R., 440, 463; *State v. Ah Lee* (1880), 8 Oreg., 214; *State v. Moran* (1887), 15 Oreg., 262; *Commonwealth v. Sal-yards* (1893), 158 Pa., 501; *Commonwealth v. Van*

Horn (1898), 188 Pa., 143; *State v. Congdon* (1884), 14 R. I., 458; *Roggins v. State* (1901), 60 S. W., 877; *Simonds v. State* (1915), 175 S. W., 1064; *State v. Mortensen* (1903), 26 Utah, 312; *Litton's Case* (1903), 101 Va., 833, 845; *State v. Lee Doon* (1893), 7 Wash., 308; *State v. Henry* (1902), 51 W. Va., 283, 299; *Sasse v. State* (1887), 68 Wis., 530; *State v. Sasse* (1888), 72 Wis., 3; *Jenkins v. State* (1913), 22 Wyo., 34, 70.

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VALDEZ *v.* UNITED STATES.

ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 361. Argued April 23, 24, 1917.—Decided June 11, 1917.

The testimony of an accomplice who turns State's evidence in a murder case is not to be discarded because of his base character, or his oscillating retraction and reiteration of the charge, but must be accorded such weight as is due it when judged by confirming or opposing circumstances, by his character and the influences which invested him.

In this case the court, considering evidence on which was based a conviction of murder, concurred in by the court of first instance and the Supreme Court of the Philippine Islands, holds that the doubts aroused by the character and vacillation of the government's chief witness (who testified that he was hired by the defendant and did the killing under his direction), are not such as to justify a reversal in view of the corroborating evidence, including evidence of a motive on the part of the defendant, and the absence of any doubt that murder was actually done.

A view of the scene of the murder by the trial judge does not deprive the accused of his constitutional right, carried to him by the Philippine Code, to "meet the witnesses face to face," where the view is conducted in the presence and with the consent of his counsel, and no testimony is taken, and no improper remarks are addressed to the judge.

The right of the accused to be present during the inspection may be waived by his counsel; but, even when the right is not waived, his absence will not warrant a reversal if no prejudice resulted.

30 Phil. Rep. 293, affirmed.

244 U. S.

Argument for Plaintiff in Error.

THE case is stated in the opinion.

Mr. Timothy T. Ansberry, with whom Mr. Challen B. Ellis was on the briefs, for plaintiff in error:

The argument of Mr. Ansberry for the defendant was devoted to the facts and to the proposition that the absence of the accused during the view taken by the judge of first instance was fatal error. The accused, he said, was in jail at the time and had not consented. Section 5 of the Philippine Civil Government Act secures in all criminal prosecutions the right of the accused to be heard by himself and his counsel. Section 3270 of the Philippine Laws, Comp. Stats. 1907, declares: "In all criminal prosecutions the defendant shall be entitled to appear and defend in person and by counsel at every stage of the proceeding." It is unnecessary to argue at length the interpretation of these provisions, or the question of the rights of an accused in a felony case and the circumstances under which they may and may not be waived, for these questions are now settled by the recent decision in *Diaz v. United States*, 223 U. S. 442.

There this court laid down the rule of interpretation of Philippine Laws to be that the prevailing course of decision in the United States should be accepted as determining the nature and measure of the rights provided, and held that, by the prevailing course of decision in the United States, an accused who is on trial charged with a capital offense is incapable of waiving the right to be present.

There is only one subject remaining, and that is whether the rule is different when the proceeding was a view of the premises, and not the taking of testimony in the court room, instructions to the jury, etc. There is some authority for the proposition that a view of the premises is not "a part of the trial" on the ground that it does not involve the obtaining of evidence. Decisions to this effect

are mainly those dealing with the question as to whether a review on appeal is prevented by lack of a complete record when it appears that the jury viewed the premises; and the solution of the difficulty in some of the cases is that review may be had because a view of the premises is not a part of the trial. Some authorities have carried this suggestion into criminal cases where the question arose as to the necessity for the presence of the accused at a view of the premises. But without attempting to analyze these authorities, or the cases the other way, it is sufficient to say that both sound reason and the weight of authority support the proposition that a view of the premises in a criminal case is a part of the trial. 3 Wharton Criminal Law, 7th ed., § 3160; 22 Encyc. Pl. & Pr. 1059; *Tully v. Railroad Co.*, 134 Massachusetts, 499; *Wall v. United States Mining Co.*, 232 Fed. Rep. 613; *People v. Milner*, 122 California, 171; *Benton v. State*, 30 Arkansas, 328.

The whole theory upon which the accused is given a right to be present at the trial applies with equal force to his presence at a view of the premises. The right to be present, "scarcely less important to the accused than the right of trial itself" (*Diaz v. United States*, *supra*), was clearly not intended to be limited to any particular occasion, or any particular kind of proceeding in the trial, but extends to "any steps taken" (*Hopt v. Utah*, 110 U. S. 574) "from the empanelling of the jury to the reception of the verdict," and during this time "nothing shall be done in the absence of the prisoner" (*Lewis v. United States*, 146 U. S. 371, 372).

And what is true of a criminal trial before a jury is equally true of a criminal trial had, as in the Philippines, before a judge only. *Diaz v. United States*, *supra*.

The right of the accused to be present is given him, undoubtedly, that he may have the opportunity to observe, and be observed, at every step taken so that he may make the best use of his own knowledge of the facts,

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and use that knowledge either in his testimony or in his conferences with counsel. At any moment of the trial something may arise which needs supplementing by facts of which the accused knows, or something may appear, either by observation of the jury or in oral evidence, which can be easily explained by the knowledge which the accused has. To say that the accused must be present when testimony, already transcribed, is read, or when the court instructs the jury, but that he need not be present when the jury is making an examination of objects and places about which the testimony centers and confirming or testing the testimony by actual view, ignores the real reason for the right.

But whatever may be the contention as to the proper function of a view of the premises, there can be no doubt that in the case at bar there was the "taking of evidence" at the view of the premises. *People v. Hull*, 86 Michigan, 446; *People v. Green*, 53 California, 60; *State v. Bertin*, 24 La. Ann. 46.

If any doubt could remain as to the right of the accused to be present at the view, because of any technical definition of the word "trial," it is disposed of by the broad language of the Philippine Code, which refers specifically to "every stage of the proceedings." See *Hopt v. Utah*, *supra*.

The Solicitor General and Mr. Assistant Attorney General Warren for the United States, submitted:

The plaintiff in error bases his right to be personally present at the view taken by the single judge trying the case without a jury upon § 5 of the Philippine Organic Act and § 3270 of the Philippine Compiled Statutes, which embody the provisions of the Fifth and Sixth Amendments to the Constitution of the United States conferring three distinct and separable rights: (a) The right of confrontation with the witnesses against him; (b) the right to be heard

by himself and counsel; (c) the right to be present at every stage of the trial.

The alleged right of a defendant to be present at a view cannot be derived from the right of confrontation with witnesses given by the Sixth Amendment. Such right applies only to testimonial evidence. *Mattox v. United States*, 156 U. S. 237, 242; *Dowdell v. United States*, 221 U. S. 325, 330; *Kirby v. United States*, 174 U. S. 47, 54, 55. See also *Mattox v. United States*, 146 U. S. 140; *Holt v. United States*, 218 U. S. 245, 252, 253; *Reynolds v. United States*, 98 U. S. 145.

The plaintiff in error claims that the right to be present at every stage of the trial is derived from the constitutional right to have the assistance of counsel for his defense. The right to have the assistance of counsel originated at a later period than the right to be present at every stage of the trial. As to the abuses which led to the adoption of this clause of the Sixth Amendment, see 2 Story on Constitution, §§ 1793, 1794. And see also 4 Black. Comm. 355; Foster's Crown Cases, 231, 232; 1 Bishop's New Criminal Procedure, §§ 14-22, 120.

The right of a defendant in a criminal case to be present at all stages of the trial, on the other hand, is a right which had long been secured to him at common law before the right to have counsel was granted to him and, therefore, is clearly not derived from the Sixth Amendment to the Constitution. Its derivation from the early English common law is well stated in *Ball v. United States*, 140 U. S. 118, 131. For further authorities from the common law, see Statute of 28 Edward III, c. 3, 1354; 4 Black. Comm. 318; and the following cases: *Rex v. Bacon* (1664), 1 Keble, 809; 1 Levinz, 146; *Rex v. Vipont* (1761), 2 Burr, 1163; *Rex v. Aiken* (1765), 3 Burr, 1785; *Rex v. Crowther* (1786), 1 T. R. 125, 127; *Rex v. Baker* (1745), 2 Strange, 1239; *Rex v. Nicolls* (1745), 2 Strange, 1227; *Rex v. Legingham* (1670), 2 Keble, 687; T. Taym. 193; *Rex v. Harris*

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and *Duke* (1689), 1 Ld. Raym. 267, 482; *Skinner*, 683; *Comberbach*, 447; *Holt*, 399; 1 *Salkeld*, 400; 12 *Mod.* 156; *Lofft*, 400; *Regina v. Templeman* (1700), 1 *Salk.* 56; *Rex v. Hayes* (1730), 2 *Strange*, 843; *Rex v. Gibson* (1734), 2 *Strange*, 968; *Sessions Cas.* 123; 2 *Barnardiston*, 412; *Cunningham*, 29; *Commonwealth v. Cody* (1896), 165 *Massachusetts*, 133; *Frey v. Calhoun* (1895), 107 *Michigan*, 130.

The right to be present at every stage of the trial must be derived from the "due process" clause contained in the Fifth Amendment to the Constitution. The dicta in *Diaz v. United States*, 223 U. S. 442, 452, which assumed that this right is derived from the Sixth Amendment, cannot be supported by authority.

Assuming, therefore, that the right to be present at all stages of the trial is a necessary part of the "due process" guaranteed by the Fifth Amendment, two questions arise in this case: (1) Is a view actually, in law, a "part of the trial" at which the common law required the defendant to be present? (2) Was the right to be present at a view such an "essential" right as public policy forbids to be waived, under the doctrine of *Hopt v. Utah*, 110 U. S. 574, as explained in *Lewis v. United States*, 146 U. S. 370, 372, and *Trono v. United States*, 199 U. S. 521, 533?

The weight of authority and of reason is to the effect that a view is not such a "part of the trial" as requires the defendant's presence. *People v. Thorn*, 156 N. Y. 286; *Price v. United States*, 14 App. D. C. 391, 405; 3 *Wigmore on Evidence*, § 1803; *Supp.*, vol. 5, § 1803. See *State v. Ah Lee*, 8 *Oregon*, 214.

That the right to be present at a view is not such an "essential" right as public policy forbids to be waived is to be seen from the fact that, at the early common law, it was optional with the defendant whether he would give his consent to be present at a view or not; and no view could be taken without the defendant's consent in a

criminal case, and such consent could be given by the defendant with or without conditions. It is clear that, at common law, if he consented to a view in his absence, a view could be had in his absence. *Sir Edward Duncomb's Case* (1635), Croke's Charles, 366; *King v. Staughton* (1671), 2 Keble, 665; 1 Sid. 464; 2 Saunders, 160; *King v. Mingsmill* (1714), 1 Sess. Cas. 87; *Anonymous* (1728), 1 Barnardiston, 144; *King v. Hatchley Tradgeley* (1732), 1 Sess. Cas. 180 (repeated as *Anonymous*, 2 Barnardiston, 214); *King v. Redman* (1756), Ld. Kenyon, 384; 5 Bacon's Abridgment, 375; Thompson's Trials, § 879; *Commonwealth v. Chance* (1899), 174 Massachusetts, 245; *Commonwealth v. Knapp* (1830), 26 Massachusetts, 496; *Commonwealth v. Webster* (1850), 59 Massachusetts, 295.

It would be contrary to public policy to hold that defendant's presence at a view is legally necessary and non-waivable. In the first place, at no properly regulated inspection can a jury (or as in this case, a single justice) do more than observe the lay of the land and the disposition of the objects of interest connected with the crime. No evidence can be taken and no criticism or opinion offered by either side. There is, therefore, in spite of remarks in the cases, no valid reason necessitating the presence of the defendant. That is obviously the reason why defendants have so often waived the privilege of attendance. In the second place, in many parts of the United States, especially in Alaska and the Philippines, views may be taken of places hundreds or even thousands of miles away from the place of trial. In our Southern and Western States, also, views may be taken in distant places and sparsely settled regions. Facilities for travel may be limited; means of conveyance insecure. A requirement of the presence of the defendant, non-waivable by him, presents a real danger or added facility for the escape, or rescue, of the prisoner.

A conclusion, therefore, which would extend to a crim-

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inal defendant a comparatively valueless privilege at the expense of the safe and effective execution of justice should be avoided if possible.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Valdez was proceeded against by complaint under the procedure of the Philippine Islands for the crime of murder. It was circumstantially described as having been committed by Valdez and one Francisco Amante and one Juan Gatmaitan, the latter having been induced by Valdez "by reason of a promise of reward" (900 pesos) to shoot one Eusebio Yuson with a shotgun furnished by Amante, inflicting nine mortal wounds, instantly killing Yuson.

There was a demurrer filed to the complaint which need not be noticed. Upon the trial of Valdez and Amante, after pleas of not guilty, the court in an opinion circumstantially reviewed the evidence and found Amante not guilty "for insufficiency of evidence." Valdez was found guilty "beyond reasonable doubt." He was sentenced to the penalty of death and to indemnification of the family of the deceased.

At a separate trial Gatmaitan was also found guilty and sentenced to imprisonment for life.

There was a motion for rehearing which was denied.

Valdez and Gatmaitan took separate appeals to the Supreme Court of the Islands, but, according to the statement of the court, at the request of counsel, the appeals were "heard and considered together, in order to give counsel for the defense an opportunity to develop any inconsistencies or contradictions which might appear as a result of a critical analysis and comparison of the evidence of record in both cases."

The judgment against Valdez was affirmed; that against Gatmaitan was modified by the substitution of death for

life imprisonment. Two of the judges dissented, one thinking that the "accused," not designating him (presumably Valdez), was entitled "to an acquittal under the facts presented"; the other being of opinion that the prosecution had "not proved the guilt of the appellants of the crime of which they were convicted."

The case is here upon a writ of error sued out by Valdez and the questions presented are, to quote counsel: (1) Whether the absence of the accused during a part of the proceedings in the trial constitutes an error requiring reversal, and (2) whether there was any evidence adequate to warrant the conviction.

The second question may be disposed of first. A negative answer is urged upon a consideration of the credibility of the witnesses, the relative probative strength of their testimonies, their mental and moral defects, the various statements of Gatmaitan, being a witness for the prosecution, first testifying to the guilt of Valdez and by subsequent statement retracting the accusation, and later retracting the retraction, and an asserted absence of motive for the crime.

The elements of these contentions were passed upon by the lower courts and the guilt of Valdez and Gatmaitan determined. It ordinarily would be enough to say that there was justification for the determination; but lest it may be supposed that the guilt of Valdez depended alone upon the testimony of Gatmaitan, he having been an active accomplice in the homicide, some comment becomes necessary and at least a characterization of the evidence.

Gatmaitan's testimony was, of course, an important factor, but it had substantial corroboration. He was shown, it is true, to be a low type of man. One who becomes for hire as he did the criminal executor of another's malice is usually such. No other would accept the shameful service. But it is not reserved for this case to make a

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novel contribution to the criminal experience of the country or to demonstrate that there are such hirers and hirelings, and when the hireling turns state's evidence, as he sometimes does, or his weakness, awed by the penalties of his crime, breaks down and confesses, as it sometimes does, or he changes or qualifies or retracts, as he sometimes does, as hope or interest or fear sways him, his testimony or confession is not to be summarily discarded but to be judged of by confirming or opposing circumstances as well as by his character and the influences that may invest him. And it was such judgment the two lower courts exercised; it is such judgment in our turn that we are required to exercise. This record, indeed, shows that the character and characteristics of Gatmaitan, his mental and social inferiority to Valdez, made him facile to Valdez' solicitation and a purchasable agent for Valdez' purpose. And Valdez was shown, independently of Gatmaitan's testimony, to have had a purpose—a fixed enmity to Yuson, engendered in a controversy over certain water rights. In gratification of it he carefully planned the crime, set its time and place, procured its weapon, gave the weapon to Gatmaitan, and hired a scout to observe the movements of Yuson and report his approach. The service was exactly performed, and upon his approach occurred the tragedy.

Yuson was shot in the back and instantly killed as he was entering his home, and the crowning horror of it was that it was done in the hearing and almost in the presence of his wife, even as she was speaking to him and moving to meet him.

Such is the outline of the crime. And crime it was. There is no dispute about that or the manner of execution. Valdez as a witness in his own behalf denied participation in it or precedent knowledge and attempted to prove an alibi. His denial was not believed, his alibi decided not to have been established. It cannot be held, therefore,

that his conviction was not sustained by the evidence and the sentence imposed upon him not justified, even though its doom be death.

Upon the other question the record shows this: Gatmaitan was a witness for the prosecution. He related that he was employed by Valdez to kill Yuson for 900 pesos, given him, Gatmaitan, for that purpose, and that he shot Yuson as Yuson was approaching his (Yuson's) house—Valdez assisting him, Gatmaitan. Indeed, Gatmaitan testified that Valdez ordered him to shoot but that the gun would not go off, and Valdez showed him how to shoot—"and right at that moment the gun went off." Gatmaitan further testified that he and Valdez located themselves "in a fence near the staircase" of Yuson's house, and from that location fired the shot.

There was other testimony, as we have indicated, and distances of objects from one another were testified to.

At the close of the testimony the prosecuting attorney asked the court to visit "the place of the occurrence in order to make there an inspection so that the court may judge of the distances." One of the counsel for the defense assented, saying, "Yes; we do not object, so that the court may see." Another counsel for the defense called for the "motive" of the prosecution in asking "for the ocular inspection." It was replied that its object was to enable the court to obtain a correct idea "of all the distances in connection with the assassination of the deceased, as well also of the places where the witnesses for the prosecution found themselves and where they talked together." And further, "We want that done in order that everything may be clear." To which counsel for the defense replied that he had on occasions been present at ocular inspections and that testimony was taken which produced confusion, and, further: "What I wish, with the consent of the prosecuting attorney, is that an inspection be made there, but that no testimony be taken

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because it produces great confusion when one tries to examine witnesses at the place of the occurrence."

The prosecuting attorney, however, thought it advisable not to dispense with such testimony or take from the court its discretion, "so that when the court arrives there it may ask of unknown persons where the deceased fell, where the wad was found, where Gatmaitan was, and where Mateo Arcilla was." All of which opposing counsel thought had been already proved.

The court expressed its willingness to make the inspection, as the result would be evidence for both parties after the defense had produced its rebuttal testimony, and upon the defense announcing that it had no rebuttal testimony, the case was closed.

The court made the inspection; Valdez was not present, but his counsel were. There is an opposition of affidavits submitted upon a motion for new trial. Those submitted by defendant (three of which were in almost exactly the same words) averred that the persons making them were present at the inspection by the court and saw the judge examine the various points at the scene of the crime and the point where Gatmaitan stood when he fired the murderous shot. That they also saw the widow of the deceased show the manner in which her husband fell—she illustrating—and that she also told the judge "certain facts which happened at the time of the murder." That they also saw Captain Crockett, of the constabulary, point out to the judge the places in the stairway and in the house where the shot had penetrated, and saw him walk with the judge and point out to him certain streets and houses connected with the case, and also saw the judge and such officer and the attorneys in the case and other persons examine other places.

One of the counsel for the defense also filed an affidavit. It averred that the judge went to the scene of the killing, accompanied by the attorneys for both sides, but that

neither Valdez nor his attorneys were consulted by the judge as to whether or not Valdez desired to accompany the court. That the widow of the deceased "explained to the judge many occurrences which she claimed had taken place on the night of the killing, . . . what she claimed to have said to the deceased just prior to the killing, and illustrated how and where the deceased had fallen, and discussed many other matters in connection with the case, during all of which time she was crying and wringing her hands in grief." That Captain Crockett was charged by at least one witness as being an official "of a body which had forced and intimidated" the witness to give false testimony against Valdez. That Captain Crockett pointed out bullet marks to the judge, pointed out where the shot was fired as indicated by Gatmaitan, and made other statements to the judge that Gatmaitan had made to him "as to other circumstances of the case." That Captain Crockett walked through the streets with the judge and pointed out to him various objects which had been referred to during the trial, part of the time being alone with the judge. That Captain Crockett discussed distances between objects, giving his opinion of the same, and particularly the distance from the house of the deceased to the house of Valdez, and told the judge in that connection that he had measured such distance with a "'speedometer' on his motorcycle." That during the inspection the affiant made objections as attorney for Valdez as to the conduct of the widow and Crockett but they were allowed to continue their conversations with the judge.

These affidavits were distinctly and circumstantially contradicted by affidavits accompanied by photographs of the positions of the judge and the persons involved. One of the affidavits was by Captain Crockett and two of them were by the attorneys who prosecuted the case, both of whom were present at the inspection and in such relation to it as to know what occurred.

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The Supreme Court, in passing upon the motion, said: "A careful examination of these affidavits and the counter-affidavits filed by the appellee satisfies us that nothing more than inspection of the scene of the murder was made by the trial judge, and that no evidence whatever was taken on that occasion; and we are of opinion that under all the circumstances there was no violation of the constitutional right of the prisoner to be confronted with the witnesses. *People v. Thorn*, 156 N. Y. 286, 42 L. R. A. 368, and the cases cited in the extended note in the annotated report."

Such being the record, we must assume that the judge in his inspection of the scene of the homicide was not improperly addressed by any one and, in the presence of counsel, did no more than visualize the testimony of the witnesses—giving it a certain picturesqueness, it may be, but not adding to or changing it. It would be going a great way to say that the requirement of the Philippine Code, carrying the constitutional guaranty to an accused to "meet the witnesses face to face," was violated and could not be waived. And we think practically Valdez' presence was waived.

But, aside from any question of waiver, it would be pressing the right of an accused too far and *Diaz v. United States*, 223 U. S. 442, beyond its principle to so hold. As well might it be said that an accused is entitled to be with the judge in his meditations and that he could entertain no conception nor form any judgment without such personal presence.

The judgment should not be reversed upon a mere abstraction. It is difficult to divine how the inspection, even if the affidavits of the defendants should be taken at their face value, added to or took from the case as presented.

It follows that the judgment of the Supreme Court must be and it is

Affirmed.

MR. JUSTICE CLARKE, dissenting.

I greatly regret that I cannot concur in the opinion of the court in this case and the fact that the decision must cost two men their lives impels me to state as briefly as I may my reasons for dissenting from it.

We have before us the record only in the case of Emilio Valdez.

Valdez is described in the opinion of the trial judge as "a highly educated man and very prominent both on account of his social standing and his wealth," and by the Supreme Court as "a recognized leader of an active political faction and a member of one of the richest, most powerful and influential families in the community."

He was convicted of lying concealed with another and of shooting, in the early evening, one Eusebio Yuson, also a man of prominence, as he was mounting an outside stairway to the second story of his village home. Pursuant to the practice of the Philippine Islands, the case was tried by a judge without the aid of a jury.

The guilt or innocence of Valdez turns upon the testimony of one Juan Gatmaitan, who was found by the trial court to be so "densely ignorant a man, of so low an order of intelligence and so lacking in instruction both mental and moral" that upon finding him guilty of participating in the murder, the court on this account, reduced his sentence from death to life imprisonment. The Supreme Court says of him that he "is a convicted cattle thief"; that "his testimony in his own behalf is wholly unworthy of credit" and that in his own case he repudiated all of his testimony in the Valdez case and testified in a manner "so incoherent, irrational and incredible as to cast doubt on all that he said in his own behalf."

To this we must add that this witness Gatmaitan first confessed to having murdered Yuson, without mentioning

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Valdez. That afterwards, but two months before the trial of Valdez, he made affidavit that he and one Mateo Arcilla went to Valdez' house during the early evening of the day of the murder, that Valdez there gave them a shotgun in the village street, and that then the two, without Valdez, went and concealed themselves on the lot of Yuson and when he came home "I [Gatmaitan] discharged both barrels of the shotgun at him at the same time and then ran to Valdez' house and delivered the shotgun to him."

Next he gave testimony, such as we shall see, on the trial of Valdez and eight days later made oath in prison that the local constables had tortured him for three weeks, not allowing him to sleep day or night, and thereby had forced him to confess that he and Valdez had committed the murder, when the truth was he did not know who killed Yuson.

Nine days after this, again under oath, he denied all torture and persecution and says that his testimony on the trial of Valdez was true.

And finally the Supreme Court says that on his own trial he repudiated his testimony in the trial of Valdez, denied all knowledge of the crime and attempted to establish an alibi for himself.

Such is the witness who tells the following amazing story on which Valdez is sentenced to death:

I can neither read nor write. I never talked with Valdez but three times in my life. The first time I was looking for sugar cane seed and he said to me that "he wished to win my friendship,"—nothing else and we parted. The second time we met in Valdez' seed field and he offered me a business, which, according to his own statement, was an easy one. I asked him what kind of a business it was and he said to me "that I should kill Eusebio Yuson and that he would pay me 900 pesos" (\$450). I told him I could not please him because I was very busy with my work

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and no one could relieve me in said work. And he told me to say nothing about it to any one and thus we parted. The third time I met Valdez he came to my hut in my sugar cane fields about five o'clock of a Sunday evening (the evening of the murder) and he invited me to return to town and I rode with him in his calesa (carriage) to his home. During this drive of about an hour he said nothing to me. When we arrived at his house he left me in the street and went into the house. When the bell struck the time of evening prayer as he did not come down from the house I thought that he was praying and when he did come down from the house he said nothing to me but handed me a shotgun.

"Q. And what did you do when you received the gun?

A. He still invited me to go to Loasan.

Q. *What did he do?*

A. *He followed me.*

Q. Where did you go?

A. To the house of Lieutenant Eusebio Yuson."

He says that on the way to Yuson's house he and Valdez stopped at a store and one Figueroa came and told them that Yuson was already there and they then approached Yuson's house and located themselves in the fence near the staircase (outside the house leading to the second story) and when Yuson arrived Valdez ordered the witness to shoot.

"Q. And what did you do?

A. I tried to shoot but the gun would not go off.

Q. And then?

A. He approached me and said 'Son of a Whore, he was able to go up and you won't shoot' and he showed me how to shoot and right at that moment the gun went off."

On cross-examination he says he pulled the two triggers and that the gun would not go off and that then Valdez showed him how to shoot. "I was holding the shotgun this way [indicating] and he was showing me how to shoot,

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saying, 'This way,' and without more ado the shot came out, the shot gun fell and I was frightened and ran away from the place and I know nothing more." He says he had never handled fire arms before, and did not know how to shoot a gun and that he did not tell Valdez that he did not know how to shoot. The shot thus fired was the one fatal to Yuson.

I shall not go into the testimony of the corroborating witnesses for the prosecution, Mateo Arcilla, who is described by the Supreme Court as "a convicted wife murderer, sentenced to life imprisonment for that crime since he appeared as a witness at the trial of Valdez," and Figueroa who with Gatmaitan and Arcilla the trial judge says pleaded guilty before a justice of the peace to murdering Yuson, without implicating Valdez.

The only motive suggested on the part of Valdez for murdering Yuson is a difference between him or his mother (it is not clear which) and Yuson about some boundary and water rights, which had been amicably settled four years before the murder, and an indefinite business rivalry, which is only remotely alluded to by the widow of the deceased.

A careful reading of this entire record convinces me, and the opinions of the lower courts throughout proceed upon the assumption, that the conviction of Valdez could not be thought of except this story of Gatmaitan which I have thus detailed from the record is believed to be true. Under the authority of the decisions of this court in *Wiborg v. United States*, 163 U. S. 632, 658; *Clyatt v. United States*, 197 U. S. 207, and in *Diaz v. United States*, 223 U. S. 454; I have thus examined this record for the purpose of determining whether there is any substantial evidence to be found in it to warrant the conviction of the defendant, and my conclusion is that there is no such evidence, because after making full allowance for differences of habit, of life and of character of the persons in-

volved and of the witnesses, I cannot conceive it possible that a man such as Valdez is described to be, even if he desired the death of an enemy or a rival (as to which there is no evidence) would bribe to shoot him an entire stranger of the most ignorant type obtainable, who had never used fire arms; should promise him money to commit the murder; should deliberately hand him, in the early evening, in a village street, the gun with which to shoot the victim; *and then should go with the murderer to the scene and participate in the assassination by pulling the trigger which fired the fatal shot.*

Comment would be superfluous. The mere narration of the story makes it impossible for me to consent to making it the legal basis for depriving a man of his life, for the testimony of Gatmaitan is not merely mistaken testimony due to faulty recollection or statement, but one of his series of stories is necessarily, consciously and corruptly false, and therefore the other should not be relied upon, especially not in a capital case. It is not uncommon for ignorant and corrupt men to falsely charge others with doing what they imagine that they themselves, in their narrow minds and experience, would have done under the circumstances of a given case, and the surest check, often the only check, on such perjury, is to recognize the impossibility that men of larger instruction and resources and experience could have been guilty of such conduct. It is, of course, possible that Valdez committed or inspired this crime but it is impossible to believe that he would have committed it in the crude, certain to be detected, manner described by Gatmaitan.

This conclusion is arrived at putting wholly aside the defense of the accused, in which he took the witness stand and, so far as the record shows, sustained himself through a searching cross-examination, in a categorical denial of the, to me, utterly incredible stories of the prosecuting witnesses.

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But even if the evidence in the case were deemed by me credible I still should conclude that the judgment should be reversed for the purely legal reason which I shall now state.

When the state closed its evidence in rebuttal the prosecuting attorney requested the court (there was no jury) to view the scene of the murder. To this counsel for the accused assented but with the request that "no testimony be taken because it produced great confusion when trying to examine witnesses at the place of the occurrence." To this request the prosecuting attorney replied: "What Mr. Southworth says would be very advisable, but I believe it would be very advisable also not to dispense with the task in which the court may exercise its discretion, so that when said court arrives there it may ask of unknown persons where the deceased fell, where the wad was found, where Gatmaitan was, and where Mateo Arcilla was."

Then this follows:

"The Court: The court has no objection to making that inspection after the defense has produced its rebuttal evidence, *not showing in the record the result of said inspection.*

Mr. Southworth: We have no rebuttal evidence.

The Court: So that we may close the case?

Mr. Chicote: Yes, sir.

The Court: Good, tomorrow you may present your arguments. The session of the court is closed."

The record further shows that the judge visited the scene of the murder, that Valdez was confined in prison several miles away at the time of the visit and that he was neither required nor invited to be present at the view.

The visit to the scene by the judge without the presence of the accused is assigned as one of the reasons why a new trial should be granted, on the ground that such action violated § 5 of the Act of Congress of July 1st, 1902,

known as the "Philippine Bill," and also Article VI of the Amendments to the Constitution of the United States, providing that the accused "shall enjoy the right to be confronted with the witnesses against him."

What was done by the judge at this view is the subject of much dispute and conflict of statement made in affidavits on motion for a new trial. A typical statement in the interest of the accused of what occurred is made by his attorney, who is described in the record as a reputable member of the bar, who stated that the widow of the deceased explained to the judge what she claimed had taken place on the night of the murder, pointing out where the deceased had fallen, and discussing many other matters in connection with the case, she weeping and wringing her hands all of the time that such interview was in progress, and that one Crockett, a constable, was active in indicating to the court various points and circumstances connected with the murder, all of this against objections made by counsel as to the conduct of the widow and Crockett.

A typical affidavit introduced by the State was by the private prosecutor Buencamino, who stated that he was present at the view, that the judge "neither received any evidence nor admitted any testimony referring to the case then being prosecuted against Valdez, and according to my best recollection I did not see the widow crying, but I saw her at a place distant from the judge. I also state that Captain Crockett did not give any evidence before the judge."

An assistant attorney for the Government made affidavit that at no time did he see the widow crying or talking to the judge, or illustrating how her husband had fallen.

However, a photograph of the scene at the time of the view indicates that it must have been a very unusual local event for a large crowd was present, and in this photograph the widow is shown in a position which must have been

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very close to the judge and it is very significant that there is no statement from the judge as to just what he did and as to what occurred at the view.

It has long been familiar, textbook, law, that a viewing of the premises where the crime is alleged to have been committed is part of the trial. Thus, in Wharton's Criminal Pl. & Pr., 9th ed., § 707, it is said: "The visit [of the jury] must be made . . . in the presence of the accused, who is entitled to have all evidence received by the jury taken in his presence." And in Enc. of Pl. & Pr., vol. XXII, p. 1059, it is said: "In criminal cases the accused is entitled to be present if the jury is sent to view the *locus* of the crime, as a view in the absence of the accused would violate his constitutional right to appear in person and be confronted with the witnesses against him."

But the law upon this subject has been recently summed up by this court (*Diaz v. United States*, 223 U. S. 442, 454) in an admirable statement, which in my judgment rules the case before us, and is as follows:

"We are thus brought to the question whether the provision in § 5 of the Philippine Civil Government Act, securing to the accused in all criminal prosecutions 'the right to be heard by himself and counsel,' makes his presence indispensable at every stage of the trial, or invests him with a right which he is always free to assert but which he also may waive by his voluntary act. Of course if that provision makes his presence thus indispensable, it is of no moment that the Philippine laws do not go so far, for they cannot lessen its force or effect. An identical or similar provision is found in the constitutions of the several States, and its substantial equivalent is embodied in the Sixth Amendment to the Constitution of the United States. It is the right which these constitutional provisions secure to persons accused of crime in this country that was carried to the Philippines by the congressional enactment, and, therefore, according to a familiar rule,

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the prevailing course of decision here may and should be accepted as determinative of the nature and measure of the right there. Kepner v. United States, 195 U. S. 100, 124.

" . . . In cases of felony our courts, with substantial accord, have regarded it as extending to every stage of the trial, inclusive of the empaneling of the jury and the reception of the verdict, and as being *scarcely less important to the accused than the right of trial itself*. And with like accord they have regarded an accused who is in custody and one who is charged with a capital offense as incapable of waiving the right; the one, because his presence or absence is not within his own control, and the other because, in addition to being usually in custody, he is deemed to suffer the constraint naturally incident to an apprehension of the awful penalty that would follow conviction. . . .

"The reasoning upon which this rule of decision rests is clearly indicated in *Barton v. State, supra*, [67 Georgia, 653] where it is said by the Supreme Court of Georgia:

"It is the right of the defendant in cases of felony . . . to be present at all stages of the trial—especially at the rendition of the verdict, and if he be in such custody and confinement . . . as not to be present unless sent for and relieved by the court, the reception of the verdict during such compulsory absence is so illegal as to necessitate the setting it aside. . . . The principle thus ruled is good sense and sound law; because he cannot exercise the right to be present at the rendition of the verdict when in jail, unless the officer of the court brings him into the court by its order."

It is difficult to imagine a case which would show the value of this rule more strongly than the case we are considering. If the description of what occurred as given by counsel for the defendant is even approximately true it is not improbable that even the most stoical judge might have been influenced by it, and the presence of the defendant might very well have had a counterbalancing

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influence, and in addition to this he was entitled to the benefit of any suggestion which he might have been able to make through his counsel.

It is very clear to my mind that *Diaz v. United States*, *supra*, in principle rules this case and that the viewing of the scene of the murder by the judge without the presence of the accused requires that it be reversed and a new trial granted.

That the conclusion I have reached in this case is not idiosyncratic or the result of an undue regard for a man's life when it is adequately proved to have been forfeited under the law is, I think, sufficiently shown by the fact that two of the members of the Supreme Court of the Philippine Islands expressed their estimate of the case made against Valdez by this record in these terms:

Moreland, J., dissenting: "I dissent. I think that the least the accused is entitled to under the facts and the law is a new trial. I believe, however, that he is entitled to an acquittal upon the facts as presented." And

Grant T. Trent, J.: "I dissent on the ground that . . . the prosecution has not proved the guilt of the appellants of the crime of which they were convicted."

For the reasons thus stated, I am of opinion that this record does not show any credible testimony supporting the judgment, that upon the authorities cited it rests upon error of law gravely prejudicial to the accused and that it therefore should be reversed and a new trial granted.

I am authorized to say that the CHIEF JUSTICE concurs in this opinion.